

No. 12073

United States
Court of Appeals
for the Ninth Circuit

J. W. MALONEY, United States Collector of Internal Revenue for the District of Oregon,
Appellant,

vs.

ROSS B. HAMMOND,
Appellee.

Transcript of Record

In Two Volumes

VOLUME II.

(Pages 337 to 662, inclusive)

Appeal from the United States District Court
for the District of Oregon

No. 12073

United States
Court of Appeals
for the Ninth Circuit

J. W. MALONEY, United States Collector of Internal Revenue for the District of Oregon,
Appellant,

vs.

ROSS B. HAMMOND,
Appellee.

Transcript of Record

In Two Volumes

VOLUME II.

(Pages 337 to 662, inclusive)

Appeal from the United States District Court
for the District of Oregon

(Testimony of A. V. Petersen.)

Q. From whom did you learn of the existence of the partnership? A. Mr. Hammond.

Q. And in what connection did he tell you or inform you of the existence of the partnership? How did it come about that he made the disclosure to you?

A. Well, it was during a general discussion that we had in his office. He mentioned the fact that he and Bill had formed a partnership in the company.

Q. Were you surprised at that information?

A. Not particularly, no.

Q. Did you say anything to him about that when you learned that he had formed a partnership?

A. Well, no more than just the general details on it or general information.

Q. Did he tell you when the partnership was formed? A. Not particularly, no. [304]

Q. Did he tell you why the information had been withheld from you?

Mr. Winter: Objected to as hearsay.

The Court: Answer the question.

(Question read.)

A. Generally, he just mentioned the fact that he wished it to be a secret, particularly from one of our former associates.

Q. Who? A. Mr. Mason.

Q. Do you remember entering into a contract yourself with Mr. Hammond regarding your employment? A. Yes.

Q. In February, 1942? A. Yes, sir.

Q. Had there been any discussion about a partnership for you?

(Testimony of A. V. Petersen.)

A. A partnership for me?

Q. Yes. Had you been asked for a partnership interest in the business prior to that date?

A. Well, no, not a partnership interest.

Q. In the course of your work, Mr. Petersen, particularly in the years 1941 to 1944, did you have anything to do with the matter of making up estimates upon which bills for payment were to be rendered? A. Yes, sir, I did.

Q. State what your work was in that connection? [305]

A. Well, preparing the amount of work completed during the month for invoicing purposes. In other words, we were on the job and would figure the amount of concrete that had been poured during the month.

The Court: You have covered that with two witnesses, now. It is cumulative.

Mr. Bischoff: If your Honor thinks it is cumulative, I will not pursue it.

The Court: No.

Mr. Bischoff: I want to ask one question in that connection with your Honor's permission.

Q. In accumulating your information that was to be included in the estimates upon which the bills were to be rendered, did you include materials that had been delivered to the job?

A. Yes. If any large material items would be stored on the job, they would naturally be included.

(Testimony of A. V. Petersen.)

Q. Did you ever have any, what you might call, inventory of materials on hand; that is, in stock piles, not for immediate use?

A. On each job?

Q. On any job.

A. Some of them, yes, we would; some of them we would not.

Q. At any rate, whatever materials you did bring on the job were included in your billings?

A. Yes. [306]

Mr. Winter: He didn't say that. He said they had a lot of materials on the job.

The Court: You may ask him that on cross-examination.

Q. (Mr. Bischoff): Before the final estimate was made up, did you go over the items with the engineers and architects who were required to approve them? A. Yes.

Q. Did they approve those bills as you prepared them?

A. Yes. They were checked before they were sent in to the office.

Mr. Bischoff: That is all.

Cross-Examination

By Mr. Winter:

Q. Did your estimates always include, up to December 31st, all stock piles on hand? In other words, if you were preparing an estimate as of December 1st, your estimate would not, of course, include any stock pile of materials on hand up to December 31st, would it?

(Testimony of A. V. Petersen.)

A. If there was a surplus of material on hand as of the end of any month it would be included in the estimate for that particular month.

Q. The estimates were not made on all jobs at the end of each month. They were made at different times during the month, whenever the work was completed?

A. Not generally, no; they were generally made at the end of the [307] month.

Q. On any of your contracts, could you bill for all materials on hand or could you only bill for the portion of the building that was completed?

A. I don't believe I understand.

Q. I will put it this way: In all of your contracts, could you bill for materials on hand?

A. If you had material stored on the job, you could bill.

Q. On all contracts?

A. If that was stipulated, yes.

Q. If that was not stipulated, then, of course, you did include the materials on hand, did you?

A. No, we would not.

Q. When could you bill for the portion of a building that was under construction which had not been completed to such a stage that it could be estimated as to the percentage of completion?

A. I don't think I understand that question.

Q. In other words, suppose you were building a smokestack and it was half up. Could you bill for that? On your estimate, could you bill for the smokestack before it was completed, or would you wait until you completed a unit?

(Testimony of A. V. Petersen.)

A. No, if it was half finished we would probably bill for half of it. It depends on the type of job you are doing.

Q. It made a difference what type of contract you were working on, and the state in which the construction was at the time of [308] the billing?

A. Yes.

Q. In other words, you would have considerably more money invested in cost of construction—not considerably more, but you would have almost as much in cost of construction as you would have in the amounts of billings? A. I don't know.

Q. What?

A. I don't know, on that one.

Q. Well, if you had to take out a lot of materials and a lot of equipment in construction, that would cost you money, wouldn't it?

A. Well, it all depends.

Q. Did the estimates that you made involve the percentage of the completion of the building or were they based on the amount invested in the building?

A. Well, which estimates are you referring to?

Q. The estimates that you made.

A. They were made two different ways. One job was on a yardage basis and another job would be on the portion of the work completed.

Q. The percentage of completion?

A. Not particularly. One job would be on the concrete yardage on that particular building for that month; on another job it would be the percentage of the work that had been completed

(Testimony of A. V. Petersen.)

to [309] date. In other words, if you had 25 per cent done, you would bill accordingly.

Q. In answer to Counsel's question, you say with respect to this so-called partnership—Did you understand in February, 1942, that Mr. Bill Hammond was a partner? A. No, I didn't.

Q. You didn't know? A. No.

Q. Did you understand that he was working the same as you were, on a percentage of the profits?

A. I knew he had a contract similar to mine.

Q. A contract similar to yours? A. Yes.

Q. Did he exercise control as a partner in the business? A. Equal control.

Q. Equal control in the business with his father?

A. Well, I wouldn't say it was very equal, but it was in a partnership way, if that is what you mean.

Q. Did he exercise any more control over the business than you did?

A. I wouldn't say more, no.

Q. Did he exercise any more control or voice in the business than Mr. Mason did?

A. As far as jobs, probably not; possibly in the office, yes.

Q. Possibly in the office? [310]

A. Yes, but I don't know about that.

Q. In other words, there was no difference in his right of control over you prior to February 3, 1942, than there was subsequent to 1942, was there?

A. Well, prior to that time I was employed directly by Mr. Hammond.

(Testimony of A. V. Petersen.)

Q. After that time, whom were you employed by?

A. Working directly with Mr. Hammond. It wasn't in connection with Bill Hammond at all, then.

Q. That was after February, 1942?

A. Correct.

Q. Counsel asked you whether or not you asked Mr. Hammond to take you in partnership, and I think you said you were not asking that, but for a percentage-of-profits arrangement?

A. That is correct.

Q. Did you ever ask to be made a partner in the business? A. No, I have not.

Q. Do you know whether Mason ever asked to be a partner in the business?

A. Not in my presence. I don't know.

Q. All you wanted was a percentage of profits?

A. I wanted a share of the profits, yes, on some sort of a basis, percentage basis.

Q. Would it have made any difference to you if Mr. Bill Hammond had been a partner in the business? [311] A. Not at all.

Q. Did you ever discuss it with Mr. Mason?

A. Well, possibly.

Q. Was Mr. Bill Hammond present when you signed your agreement?

A. No, not when I signed my agreement with Mr. Hammond, no.

Q. Who was present?

A. Mr. Hammond and Mr. Mason and Miss Novak.

(Testimony of A. V. Petersen.)

Q. Where were you when you entered into that agreement, in the office downtown, or in Mr. Jacob's office, or where?

A. In our office in the Spalding Building.

Q. Where?

A. Our office in the Spalding Building.

Q. The first time that you heard of the so-called partnership arrangement or agreement was about 1944, wasn't it?

A. That is correct, about that.

Q. When the returns were being made in March of that year?

A. I can't answer that exactly. It was approximately two years later.

Q. Was Mr. Mason with you when Mr. Hammond told you that he had such an agreement?

A. No.

Q. Have you ever seen the agreement to this date?

A. No, I have not asked for it.

Q. Are you still working for Mr. Hammond?

A. Yes. [312]

Mr. Winter: That is all.

Mr. Bischoff: That is all.

(Witness excused.) [313]

GARTHE BROWN

was thereupon produced as a witness on behalf of the plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Bischoff:

Q. Where do you live, Mr. Brown?

(Testimony of Garthe Brown.)

A. Portland, Oregon.

Q. How long have you lived here?

A. All my life.

Q. How old are you? A. Thirty-three.

Q. What is your profession?

A. Attorney and accounting practice, specializing in income tax work.

Q. How long have you been an accountant?

A. About eight years.

Q. You are not a Certified Public Accountant?

A. No, I am not.

Q. Will you tell the Court what experience you have had in accounting?

A. Well, the first training I took, of course, was in high school; then in the LaSalle Extension University. I took their complete course in higher accountancy and took the course of Northwestern School of Commerce here in Portland and extension courses at the University of Oregon. [314]

Q. Where have you practiced your profession after your training?

A. Well, I was employed in accounting work for Adren Farms here, or the Sunfreeze Ice Cream Company; I was there about six months.

Then I was with Montgomery Ward, doing buying and also there was accounting work connected with it. From there I became associated with Mr. Jacob in the preparation of tax returns, and we also, of course, have some clients' books that are kept under our supervision.

Q. Mr. Robert T. Jacob? A. Yes.

(Testimony of Garthe Brown.)

Q. One of the attorneys for plaintiff in this case? A. That is correct.

Q. Are you associated with him in business at this time?

A. Yes, I am a partner with him now.

Q. When was that partnership performed?

A. January 1, 1947.

Q. Does this partnership include any interest in any compensation to be received from this case?

A. None whatsoever. Mr. Jacob had this case prior to that time and it was held out of the partnership, and Mr. Jacob and I both so understand it.

Q. In the course of your employment, prior to the partnership, you worked for Mr. Jacob as an employee? A. Yes.

Q. In the course of your employment by Mr. Jacob, did you have [315] occasion to examine the books and records of Ross B. Hammond Company?

A. Yes, I did.

Q. Over what period of time did you have occasion to examine those books?

A. During the month of November, 1946, both Mr. Johnson of our office and myself spent considerable time in preparation for this case.

Q. Did you have anything to do with Ross B. Hammond's books or accounting methods prior to that time?

A. Well, at various times since I became associated with Mr. Jacob he would bring certain records into the office and ask me to prepare balance sheets. I took over the tax returns for one or two

(Testimony of Garthe Brown.)

different years and was familiar ever since I have been with Mr. Jacob with their records.

Q. But the first time you made any extensive examination of the records of the Ross B. Hammond Company was after this controversy arose?

A. That is correct.

Q. When I say "controversy" I mean after the Commissioner of Internal Revenue had made a deficiency assessment?

A. That is correct, yes.

Q. To what extent did you examine the records in that connection?

A. With three of us working on the job there we checked, first, to see how the billings were made and followed them through the [316] journal to the general ledger. I checked with both Mr. Hammond and Mr. Petersen to see if certain items were not billed and why they were not and determined whether or not items had been accrued; checked the expenses to see that they were properly supported by vouchers, and the three of us made quite an extensive survey of the records.

Q. Tell particularly what you did yourself. Did you, yourself, make this extensive examination of the books?

A. Yes, I personally compared the records with the tax returns in order to see that the items as reported on the tax returns reflected the books.

Q. When you started on that investigation——

Mr. Winter: We will object to this line of testimony, your Honor, on the ground that the witness is not qualified. The witness is a member of the

(Testimony of Garthe Brown.)

partnership representing the plaintiff. He is not called to testify as an expert in this case. His testimony is biased and prejudiced and, if I may bring it out on my own examination, I can show it. I object to this witness testifying. He did not keep the records. He merely investigated them. It is hearsay, as far as he is concerned.

The Court: The objection is overruled.

Q. (Mr. Bischoff): Mr. Brown, when you launched upon that investigation, did you have before you the Revenue Agent's report upon which the deficiency was assessed? A. Yes. [317]

Q. I call your attention to Exhibit 20 and ask you if you had that report before you when you were making your examination? A. Yes.

Q. Did you familiarize yourself with it to be aware of the contentions that were being advanced by the Commissioner? A. Yes.

Q. And upon which the deficiency was prepared? A. Yes, I did.

Q. Did you particularly direct your attention, in making your examination of this problem—First, did you particularly direct your attention, in your examination, to the issues being raised by that report? A. We did, yes.

Q. You recall from that Revenue Agent's report, one of the questions raised is as to whether an accrual method of accounting was used by the plaintiff in the tax years 1939 through 1940.

Did you examine the records that were maintained by Mr. Hammond with a view to determining that question? A. I did.

(Testimony of Garthe Brown.)

Q. And at that time did you examine the books that are now in court, the journal, the ledger, the trial balance, the auxiliary ledgers and billings that have been produced here in court?

A. I know that we had the general ledger, the journal, and we had the contracts before us, but I don't believe we had the [318] trial balance book at that time, but I do know that these three were before us while we were working.

Q. Did you see the trial balance book at any time thereafter?

A. I don't believe I looked at the trial balance book. I think we had our own trial balance that we made up from the books.

Q. From the examination of the records that you have made, are you able to state whether the accounts of the Ross B. Hammond Company were maintained on the accrual basis during the years 1939 to 1944?

A. I am and I——

Mr. Winter: Just a minute. Just answer the question.

Q. (Mr. Bischoff): I just want to know, first, if you are able to so state?

A. I am, yes.

Q. Will you state whether, in your opinion, the books were maintained on the accrual basis during those years?

Mr. Winter: That is objected to, your Honor, on the ground the witness did not keep the books. He has not been qualified as an expert to testify upon what basis they were kept, they were not under his control and in his custody, and he has said

(Testimony of Garthe Brown.)

he did not see them until after the investigation was commenced in this case.

The Court: Objection overruled.

A. The books were kept on the accrual basis.

Q. (Mr. Bischoff): Are you able to state from the examination [319] that you made whether the method of accounting that was used was consistent from 1939 to 1944?

A. They were kept on a consistent basis, yes.

Q. Did you compare the tax returns that were made by Ross B. Hammond Company during the years that I mentioned with the books?

Mr. Winter: During what years, Mr. Bischoff?

Mr. Bischoff: During the years 1939 to 1944, the years I have been talking about.

Mr. Winter: You introduced the returns for 1938 to 1944. I just wondered why you included 1938.

A. I know I checked the years 1940, 1942 and 1943. I am not sure—we had four. 1939. I am not sure about 1939. I do know we had 1942 to 1943, for sure.

Mr. Bischoff: 1941?

A. 1940, 1941, 1942 and 1943.

Q. Those are the returns you examined?

A. Those are the returns that we had and checked.

Q. Did you examine those returns and check for the purpose of determining whether the returns were made on the same basis the books were maintained? A. I did.

(Testimony of Garthe Brown.)

Mr. Winter: Objected to, your Honor. Object to this line of testimony.

The Court: It is so understood.

Mr. Winter: I beg your pardon? [320]

The Court: It is so understood.

A. We did. Checked them, compared the books with the returns for those years.

Q. (Mr. Bischoff): Were the returns made in accordance with the books as they were kept?

A. They were.

Q. From your examination of the books, as they were maintained and kept during the years 1941 to 1944, inclusive, are you able to state whether the books clearly reflect the income?

A. They do, with minor variations, as is true of practically every set of books I examine.

Q. Were you able to tell from the records that you examined whether they accrued items only at the end of the year or whether they accrued items as they went along?

A. They accrued them as they went along over the year.

Q. When? What period?

A. At the end of each month.

Mr. Bischoff: You may cross-examine.

Cross-Examination

By Mr. Winter:

Q. You are a member of the firm of Jacob, Jones & Brown, Attorneys at Law?

A. Correct.

Q. Mr. Jacob is of counsel on behalf of plaintiff in this case? A. Yes. [321]

(Testimony of Garthe Brown.)

Q. As a matter of fact, in November and December, 1946, you had conference with myself, as Attorney for the Government, and the Revenue Agent, as counsel representing the plaintiff in this case, didn't you? A. That is correct.

Q. You are one of the attorneys for the plaintiff in this case, although you won't share in the fee, isn't that right? A. That is right.

Q. You have been working for Mr. Jacob for a number of years? A. That is correct.

Q. You never went out to examine these books until after the Revenue Agent had made his report and you were furnished with a copy of it?

A. That is correct. I looked at the books only after the Revenue Agent made his report.

Q. Counsel is talking about an assessment by the Commissioner. As a matter of fact, the taxpayer signed Form 870 which consented to the assessment without the necessity of a formal letter, isn't that right?

A. That was correct, with the idea of expediting——

Q. No deficiency letter issued; all you had was the Revenue Agent's report, showing the taxpayer's consent to an 870 deficiency letter?

A. That is correct. That was in order to expedite a determination of the case, however, Mr. Winter, as you know.

Q. Then the tax was paid and a suit for refund was brought? [322] A. Yes.

Q. A claim filed and suit for refund brought?

A. Yes.

(Testimony of Garthe Brown.)

Q. You prepared the claim for refund, didn't you?

A. I assisted in it. I did not prepare it. Mr. Jacob——

Q. Did you prepare the returns for the taxpayer for the years 1942 and 1943?

A. I do not believe in either of these years I prepared them. I believe in 1943 I assisted Mr. Jacob with some computations, because I was familiar with it, and went over it with him.

Q. Now, you say the books were kept on an accrual basis. You mean the accounts were kept on an accrual basis, don't you?

A. Well, the accounts in the books.

Q. How were the contracts kept on the books, the long-term contracts?

A. Well, the items of expense were charged to the particular contract involved and as items of income became billable they were billed and accrued to the contract.

Q. No inventory of stock piles or percentage of contracts that were not complete were set up on the books?

A. No, no inventory set up because it wasn't necessary.

Q. No consideration given for cost of construction for which they would not be able to bill the owner, isn't that right?

A. That is correct; only items that were billable when the work was in such state that it could be billed were set up on the [323] books.

(Testimony of Garthe Brown.)

Q. You heard the testimony of the last witness or the next to the last witness, Miss Novak, the bookkeeper, that part of the December work, work which commenced in December, was accrued and set up on the books as income in 1943?

A. That is correct.

Q. Would you say that was good accounting practice?

A. It was. My understanding of that particular item that you are referring to, Mr. Winter, is that that item was not billable on December 31st; as a matter of fact, over two months there was less than one-half of one per cent of that particular job completed.

Q. How about the work in progress?

A. Well, you mean between November 30th——

Q. Yes. A. ——and January 31st?

Q. Yes.

A. On that particular job, we checked with the engineers, and there was less than a half of one per cent of the work completed over that period that could have been billable.

Q. Take this Milwaukie Housing Project, income \$7,634.90 and only a cost of \$575. Would you say that part of the report clearly reflects the income in that particular year?

A. In that particular item, there was a dispute as to whether the money was available and disputed items are not to be taken [324] as income until the dispute is settled. The expenses had been incurred and, therefore, it is a legitimate accrual.

(Testimony of Garthe Brown.)

Q. The expenses that had been incurred for an item that was in dispute, you say if the income is not accruable, you say the expense is accruable?

A. Well, let me explain.

Q. Just answer the question, Yes or No. Can you answer that Yes or No? A. No.

Mr. Bischoff: I think counsel should give the witness a chance to answer.

The Court: Go ahead.

A. As to this particular item, Mr. Winter, everything that was billable had been billed and all expense that had been paid had been paid and accrued, and I would say that would be a proper method of handling that, because all the money that the company was going to collect had been billed. They might have had to spend \$7,500 to complete it. In fact, that was their testimony. Therefore, that would not have been income then because they would not have gotten any more from the project.

Q. (Mr. Winter): Do you mean to tell me, Mr. Brown, with your experience as an accountant, that if it cost \$5,000 in expenses in connection with one item, and it is a disputable item and you don't know whether you are going to get paid for it or not, that you should accrue the expense in the year in which it was incurred, [325] or do you accrue it at the time you accrue the income, for good accounting practice, or do you set it up as work in progress?

A. In the first place, work in progress is not required of the contractor.

(Testimony of Garthe Brown.)

Q. We are assuming that. As to whether or not it is required is another question, but I am assuming that it is required.

Mr. Bischoff: You should include it in your question, then.

A. The money for this particular work, in your hypothetical question, having been expended, with no chance of recovery, a dispute existing as to whether or not you are going to collect it—you certainly have spent the money and are entitled to deduct that item.

Q. (Mr. Winter): The books of the Ross B. Hammond Company do not reflect work in progress; no adjustment is made for work in progress?

A. That is correct.

Q. No adjustment is made for materials on hand, not billed for? A. That is correct.

Q. How do you account in the books for income received of \$1,036,000 on one contract and costs of \$20,000, excessive costs over income? How do you account for that distortion of income or apparent distortion of income?

A. The explanation, I think, is that on that part of the contract they were losing money; the costs were exceeding the rate they [326] were able to bill and in a later year an adjustment was made whereby they were able to make up that difference and, of course, having expended a good deal of money getting started, they came back in the last half of the contract, because they got a larger amount of work.

Q. In other words, from the books you determined they had a 50-per cent profit on the contract

(Testimony of Garthe Brown.)

in 1942, and where they had \$1,000,000 they had a 20-per cent loss—a \$20,000 loss, is that your contention?

A. That is on the particular part of the contract they were working on, yes.

Q. You did not determine that there may have been a considerable amount of work in progress for which they could not bill in 1942 and that was billed in 1943, did you?

A. There was no work in progress to be done.

Q. You didn't know it at the time? The books didn't show it?

A. The books reflected no work in progress.

Q. They do not show any work in progress?

A. That is right.

Q. You didn't know whether there was work in progress at that time, did you?

A. I didn't know whether there was work in progress, that is true.

Q. You don't know whether there may have been a million dollars of work in progress at that time?

A. Other than that we did check it and determined that particular [327] contract was a loss contract.

Q. Is that the reason why, in the next year, 1943, they had \$93,000 profit with only \$274,000 in income?

A. That is explained, I believe, because of the fact they went into the contract and they incurred items of expense in the first half and then, getting

(Testimony of Garthe Brown.)

an additional contract, these items do not have to be purchased again and, so, there was a larger amount of profit.

Q. This is the same argument as when you were representing the taxpayer, as **attorney for the taxpayer**, in the conferences?

A. That is correct.

Q. But you also admitted at that time, that there was a considerable distortion of income, didn't you?

Mr. Bischoff: Objected to as incompetent. A disclosure of negotiations, I submit, is not competent here in the trial of the case.

The Court: Where he takes the witness stand, I think it is. Objection overruled.

Q. (Mr. Winter): Isn't that right?

A. In the conferences, as a method of arriving at a settlement, I stated that if the Government would admit a partnership existed, we would go along on that. I never did agree with you, however, as to that point of making the concession that the accounting was not proper and hesitated——

Q. (Mr. Winter): Mr. Brown—— [328]

Mr. Bischoff: Wait a minute. Let his finish.

Mr. Winter: I thought he had finished. Go ahead.

Mr. Bischoff: You wait.

A. In the process of the settlement we raised the question that we wanted to sustain the accounting for the reason that the Government's method was so improper that we would have kept at it a year making three years' prior returns and

(Testimony of Garthe Brown.)

much time would be involved in preparing tax returns for the Ross B. Hammond Company, preparing returns for three or four or five past years, depending on how long the contract lasted; and we also said in those conferences that in our opinion that these distortions were bound to occur; that you could level them off by hindsight, which is the way Mr. Williams did in his report——

Q. He did it on a per cent of the cost?

A. That is right.

Q. Percentage of the profits?

A. That is right.

Q. Spreading it out over the length of the contract?

A. That is just as illogical, and we argued at that time that in any job it is only logical that on some portion of it they would make a greater rate of profit than on another, and by taking the money and spreading it out in that way, it certainly is not good accounting practice. It is not good accounting.

Q. Is it possible to take these books and records and show the amount of work in progress at the end of a year and the [329] amount for which no billings had been made, and then adjust the returns to arrive at the correct income?

A. By the books and records it is not possible to determine the work in progress. We didn't feel it was necessary.

Q. You did not feel taking into consideration the inventory was necessary?

A. That is correct.

(Testimony of Garthe Brown.)

Q. It is not possible from the books to arrive at a more proper allocation of income for these years except on a basis as used by the Commissioner?

A. The basis used by the books would be a more logical basis than that used by the Commissioner in that they more truly reflect the income, as earned. They reflect the less profitable contracts as well as the more profitable.

Q. Is a \$93,000 profit on a \$184,000 cost more reasonable than—Would you say that \$93,000 on \$184,000 is a reasonable profit, costs of \$182,000, about? Would you say that is a reasonable profit?

A. I would not say it is a reasonable profit unless——

Q. Wait a minute. You have answered the question.

Mr. Bischoff: Let him explain it.

A. Unless I knew the facts, because that has happened in many businesses, where, through circumstances of a loss in one year and a profit in another year, that situation might be disclosed.

Q. Would you say that \$7,058.97 is a reasonable cost with— [330] Would you say that \$7,058.97, with a cost of \$575.12, is a reasonable profit? Do you think that is a reasonable profit?

Mr. Bischoff: Objected to, your Honor, as an improper premise because of the fact the evidence now discloses that represented work that was done in December and the expenditures made in January. He is including an erroneous premise in his question.

(Testimony of Garthe Brown.)

The Court: Mr. Brown knows. I think he can explain that.

A. If the matter were not explained, I would say it was an unreasonable profit, but an explanation has been given as to why it occurred.

Q. (Mr. Winter): On an accrual basis you have only accrued \$575.12 in costs and \$7,058.97 profit, over \$7,000 more.

Mr. Bischoff: I want to object to the question and to further examination along this line upon this basic proposition: That it is fundamental to this case, as to what is meant by "clearly reflect the income."

I called your Honor's attention to the decision of the Supreme Court which settled that question once and for all. I rather believe if that decision had been known to the Revenue Agent at that time he would not have made the report that he did.

The contention was made in that case that the term "clearly reflect the income" must mean that it must clearly reflect the income in a given year, and the Court rejects that [331] contention in no uncertain terms.

The Court said:

"The rationale of the system is this: 'It is the essence of any system of taxation that it should produce revenue ascertainable and payable to the Government at regular intervals. Only by such a system it is practicable to produce a flow of income and apply methods of accounting, assessment, and collection capable of practical operation.'

(Testimony of Garthe Brown.)

“This legal principle has often been stated and applied. The uniform result has been denial both to Government and to taxpayer of the privilege of allocating income or outgo to a year other than the year of actual receipt of payment, or, applying to accrual basis, the year in which the right to receive, or the obligation to pay, has become final and definite in amount.

“But the petitioner urges that (Sec.) 43 has altered the rule so that a hybrid system, partly annual and partly transactional, may, within administrative discretion, be substituted for these annual accounting periods. It urges that the change was due to the desire of Congress to prevent distortion of true income. This must mean distortion of true income, not of a given year, but in the line of ultimate gain from a series of transactions over a period of years, growing out of, or in some way related to, an initial transaction in the taxable year.”

(*Security Mills Company v. Commissioner of Internal Revenue*, 321 U.S. 281.) [332]

The Court: Where did you read from?

Mr. Bischoff: I have been reading from the Supreme Reporter, at the very last section of the opinion.

The Court: What Supreme Reporter is that?

Mr. Bischoff: 64 Supreme Court Reporter 596. I read to your Honor from the bottom of page 598 and 599.

I do not want to take your Honor's time—it is getting late—to read other pertinent portions of the opinion, but the Court there makes a complete

(Testimony of Garthe Brown.)

analysis of this system of accounting, the accrual and cash basis, and points out the impossibility in any system to clearly reflect income in a true and certain sense because, as they point out, under no system, when you get to the end of a year, are you always able to determine the income, because there may have been bills which may have been incurred but not received or, on the other hand, conditions may be reversed.

The Court: You took a half day to educate me on the different points of the case, so I still have them in mind. It may be that the Supreme Court might change its mind as it so very often does these days.

Mr. Bischoff: At the present, obviously, I assume we are all bound by it and, if we are, then this line of examination is all beside the point. The Supreme Court says that the test is: Is there a clear reflection of income over the period of the years in which that transaction was involved? [333]

The Court: Mr. Brown, being a lawyer, knows what the rules are. Answer Mr. Winter's question, in the light of your position of being required to render an opinion, whether this reflected income, undistorted. That is the question. Go ahead and answer it.

A. My opinion, Mr. Winter, is that the profits from this particular contract are reflected properly, in light of the explanation that has been given here in the courtroom.

(Testimony of Garthe Brown.)

Mr. Winter: Although you admitted to me and to Mr. Williams, in conferences, that there was a considerable distortion of income.

A. In the conferences we were discussing the fact——

Q. You were willing then to admit——

Mr. Bischoff: Let him answer.

A. At no time, Mr. Winter, did I any more than state that it would be just a matter of trading horses with the Government, just to settle the case out of court.

Q. You offered to accept the Commissioner's determination?

A. I did not. I believe you are wrong. I offered to take that and discuss it with Mr. Jacob, and that was the result of the conference. I stated that if I were you it would be a good offer to take up because I knew, from having made calculations, that we would get practically the entire refund if the accounting issue were lost, which was actually the case, and I assume it was because we would get practically the entire refund that the [334] Government backed down on its offer.

Q. The Government did not make an offer, did it?

A. You submitted an offer, Mr. Winter.

Q. After you submitted it to me.

A. No, you submitted the offer. I did not.

The Court: How much was it? Don't get so stirred up here. How much in dollars? How much did the Government offer to settle for?

Mr. Winter: We never arrived at a dollars-and-cents basis.

(Testimony of Garthe Brown.)

The Court: How much, in dollars?

A. Your Honor, we would have received a refund of between \$120,000 and \$145,000. The reason we wanted to accept that offer——

The Court: I do not want your reason.

Mr. Winter: The offer of settlement is contained in the exhibits.

Mr. Bischoff: I did not know it was.

Mr. Winter: Yes, here are the computations, Exhibit 29.

Mr. Bischoff: That is your computation.

Mr. Winter: This is the Commissioner's computation of the amount.

The Court: He said the lawsuit is over \$145,000 and you offered to settle for \$20,000 less. Is that what you just said?

A. That is right. That would have had the effect of a recovery of all but about \$20,000. [335]

Mr. Bischoff: Will you clarify that?

Mr. Winter: Yes. This is not the amount of the offer.

The Court: At this time we will adjourn until 10:00 o'clock in the morning.

(Thereupon, at 5:15 o'clock p.m., an adjournment was taken until 10:00 o'clock a.m., January 15, 1948.) [336]

Court reconvened at 10:00 o'clock A. M., January 15, 1948.

Mr. Bischoff: Before we proceed, may I make an inquiry? At the outset, when we introduced the exhibits and the Internal Revenue Agent's reports

were introduced in evidence, Mr. Winter submitted to Your Honor a copy that he says he prepared. We did not have a chance to examine it, and I would like to have an opportunity to see it.

Mr. Winter: That is copied from the exhibits attached to the Revenue Agent's report. My secretary copied them.

Mr. Bischoff: This is not an entire copy of the Revenue Agent's report. It only represents the basis upon which his computations were made and his statement as to the reasons for it and the fact situations upon which it is predicated have not been attached, and we would like to submit to you, instead of this, a complete photostatic copy of the exhibit, which is a little easier to read, containing the entire report, and not merely a computation.

Mr. Winter: You misunderstood. That has not been offered in evidence. I merely gave it to the Court when we were talking about these contracts. I am not offering it.

The Court: I will accept it in the nature of a brief.

Mr. Bischoff: We have a photostatic copy of the complete computations. The significance of them cannot be understood [337] without reading the fact situation upon which the Commissioner predicated it.

The Court: Give me both of them, then.

Mr. Bischoff: May we, instead, submit the complete record?

Mr. Winter: Along the lines of that report, the question came up last night as to computations, and I want to hand Your Honor Defendant's Exhibit No. 29. That has been identified as a re-computation prepared by the Commissioner of Internal Revenue, Income Tax Unit, on the basis of the offer which we were discussing, disclosing the tax liability which would be due had the offer been made and accepted by the Commissioner, disclosing a deficiency of \$3,156.41 for the years 1942 and 1943 and substantially, I think, about \$12,000-odd overpayment for 1941, but a deficiency of \$50,000 against William A. Hammond, that being that the Commissioner recognized that a partnership existed, 75 per cent in Mr. Hammond and 25 per cent in William A. Hammond and conditioned that the method of accounting as adopted by the Commissioner, with deductions which the Commissioner contends were necessary, be accepted; in other words, by not allowing as accruals the accruals to Mr. Mason and Mr. Petersen, on which we have ample evidence. That is all that was submitted for, to show what the tax liability would be if the offer was accepted upon that basis, and not as \$103,000. That is out of the picture entirely.

Mr. Jacob: I would like to say this: The matter of the deductions [338] of the accrued profits to Mason and Petersen was not challenged by the Internal Revenue Department. They were left as they were accrued on the books. The offer that was submitted at the request, by the way, of Mr. Winter——

Mr. Winter: I beg your pardon, Mr. Jacob. You refer to your letter and you would not make that statement. Refer to your letter of November 29, 1946: “. . . . If you will indicate what kind of a settlement you would be willing to recommend, we should be glad to receive it.”

Mr. Jacob: That was written at your request.

Mr. Winter: Yes, I told you you had to make the offer.

Mr. Jacob: Yes.

Mr. Winter: I told you what I would recommend.

Mr. Jacob: The difficulty is in the computation Mr. Winter has made he has disallowed the deductions to Mason and Petersen which were conceded as proper at the time the report was made.

Mr. Winter: No, they have never been conceded by the Commissioner.

Mr. Jacob: They were accepted.

Mr. Winter: The Commissioner of Internal Revenue has never conceded them. He did not accept the report in that respect.

Mr. Jacob: He did not challenge them. Now, the facts are that the offer I made—and I very specifically set forth the basis for it—was contingent upon the adjustment of the Mason and Petersen amounts, on the basis of the income as computed by [339] the Internal Revenue Agent.

In other words, instead of allowing 20 per cent of the profit that we showed on the books for Mr. Mason in 1942 and 15 per cent of the profits to Mr. Petersen in the year 1942, by the transfer of

the profits from 1943 to 1942, that would, of necessity, increase the amount of profits that went to Mason and Petersen, so, at the suggestion of Mr. Winter, that they would concede the partnership issue if we could get together on the accounting issue, I submitted that.

The computations were made by Mr. Brown and Mr. Williams, here, and the refund that they arrived at by their computations, for 1942-1943, was \$102,166.10, plus interest.

Here is a letter from the Attorney-General, October 15, 1947, to Ross B. Hammond or, rather, re Ross B. Hammond vs. Maloney, Civil No. 3078:

“You submitted an offer in the above-named case whereby the Government would waive the partnership issue involved, beginning January 1, 1942, and division of the profits would be made in accordance with the Revenue Agent’s report dated November 6, 1944; according to a recomputation prepared by the Internal Revenue Agent the refund due the taxpayer under this offer would be \$102,166.10, plus interest. This is to advise you, after careful consideration, the offer has been rejected by the Attorney-General.”

In addition to that refund, there would have resulted [340] a retention of the refund for 1941, amounting to \$6,536.10 and, by reason of the fact that, in computing the 1942 and 1943 income, the Revenue Agent took out of the year 1944 some \$24,000, there would have been a refund also, as a basis of this adjustment, for the year 1944 of \$12,536.81.

Adding those three together, we get a total, with a refund of the interest that was paid—the total refund we would have received under the proposal that was made would have been \$148,160.11.

At the time this discussion was had I was not present. Mr. Brown was there, but the concession with respect to the accounting was made purely for the purpose of effecting a settlement and we considered, in the long run, the actual facts would work themselves out, and we were prepared to enter into negotiations, and were in agreement with the Internal Revenue Department as to the basis.

The issue then that evidently disturbed the settlement was bringing in this Mason and Petersen issue, which was not in the case until after the offer was submitted. That ultimately, Mr. Bischoff points out, gave rise to the attempt on the part of the Department to file, by way of an intervention suit, an amended answer.

Mr. Winter: If Your Honor please, Counsel has been talking about the counterclaim or the offset that the Government was trying to assert in the case by having the United States made a [341] party, for which a separate suit has been brought. That is only a defense to the plaintiff's contention.

The plaintiff says, "I did overpay my tax. I think I am entitled to a refund." The Government says, "You did not overpay your tax. You did only not overpay your tax, as shown by your computation but, if the proper accruals are made, you owe an additional \$3,000," even conceding that the partnership actually existed, that this secret part-

nership actually existed. Of course, if the partnership did not actually exist, there is a substantial deficiency.

Mr. Bischoff: I want to correct Mr. Winter's statement regarding the nature of the defense which he tendered. He tendered two defenses in the amended answer and subsequently started a new suit, and attempted intervention, but in the amended answer he filed in this court, and which he asked leave to file, the first one is labeled "Additional Defense."

Mr. Winter: Yes.

Mr. Bischoff: The allegation of the "Additional Defense" is: "Defendants are informed and believe and upon such information and belief allege that income of the alleged partnership for the year 1942 in the amount of \$86,635.88 was not reported by or taxed to plaintiff; that income of the alleged partnership in the year 1943 in the sum of \$77,-366.37 was not reported by or taxed to plaintiff."

Then, in the next paragraph, he points out the transactions [342] out of which these two items arose, and points out that they represent the share of the profits allocated and credited to Petersen and Mason for those two years. That is the matter that Mr. Jacob attempted to reserve in the settlement and made it a condition that they be recognized as entered on the books.

Mr. Winter: Well, it seems to me——

Mr. Bischoff: Those contentions were barred by the statute of limitations.

Mr. Winter: I cannot understand how any ques-

tion of statute of limitation can be raised in this case as to whether or not a taxpayer has overpaid his tax or not. That is still a question for the Court to determine.

In other words, the Court has got to determine in this case what tax the taxpayer actually owes and what tax he paid. In other words, the Court has got to determine from his returns exactly what tax liability this—what the tax liability of this taxpayer was for that year. He has said he has overpaid the tax by the sum of \$175,000. What are the facts? What was the taxpayer's true tax and how much did he owe?

We will submit substantial and ample authority to the effect that if the taxpayer has not overpaid his tax upon any basis he cannot recover in this action, no matter what it was. In other words, if the Court can find on its own motion that some of these deductions were not proper, he cannot recover. The taxpayer's counsel has been advised of this contention of [343] the Government for many moons.

Mr. Bischoff: The briefs we submitted cited many cases to the effect that even in a tax refund case you cannot bring into issue, for the purpose of reducing or increasing the amount involved, consideration of items which have been barred by the statute of limitations, and I assume Your Honor had those decisions in mind when the ruling was made.

GARTHE BROWN,

a witness on behalf of plaintiff, having been heretofore duly sworn, resumed the stand and further testified as follows:

Cross Examination (Cont'd.)

By Mr. Winter:

Q. Mr. Brown, you testified, you, in company with someone else, went down to examine the books and records of the Hammond Company. Was that before or after the investigation by the Revenue Agent?

A. That was after the investigation, Mr. Winter. It was in the year 1946.

Q. In 1946?

A. That is correct, in the month of November.

Q. In the month of November?

A. That is correct.

Q. How long were you down there?

A. I put in, I would say, roughly the equivalent of about two weeks of my time during that period. I was working day and night [344] during the week we were there and at least some time in another week.

Q. Who were "we"?

A. Mr. Johnson of our office and Mr. Peterson of our office were also over there.

Q. Mr. Johnson and Mr. Peterson?

A. That is correct.

Q. However, at that time you did not see all the books and records of the company, did you?

A. I saw all of them that are before us here.

Q. I think you testified you did not have access to the cash journal?

(Testimony of Garthe Brown.)

A. No, the trial balance. We made up our own trial balance while we were there.

Q. When was the first time you learned that the partnership existed?

A. I have known the partnership existed ever since practically I became associated with Mr. Jacob. In fact, my first knowledge of it was when I was discussing with him a draft of Articles of Partnership and he suggested that the other agreement I was drafting—That was in May of 1943—would be similar to the Hammond Articles, that it happened to be in a similar situation, and that I read those over as a guide in order to draft my other Articles, so I have known of it ever since I knew Mr. Hammond was a client of our office.
[345]

Q. In 1943; you used a draft made up then?

A. A copy of it was in our files at that time.

Q. In 1943? A. That is right.

Q. That is when you used it in connection with the preparation of another form of partnership agreement in some other case?

A. That is right.

Q. You say that these books were kept on a strict accrual basis?

A. That is correct.

Q. That is, the accounts?

A. That is right.

Q. Under a strict accrual system of accounting is it possible, under income tax law, in your opinion, to accrue contingent liabilities?

A. No.

Q. Not legally enforceable? A. No.

(Testimony of Garthe Brown.)

Q. Until some future date? A. No.

Q. Therefore, if any items were accrued on the books which were contingent liabilities, not presently legally enforceable, they would not be proper accruals, would they?

A. That would be correct.

Q. Was there anything on the books to indicate that a partnership existed as of February 3, 1942? [346]

A. There was nothing on the books and records here. The only thing would be the agreement which we knew of.

Q. The agreement was not in the books and records? Was it?

A. No. It was kept in the files of the company and in our files.

Q. How do you know where it was kept?

A. I know we had a copy in our files.

Q. Did you keep the income tax returns of the company? A. No.

Q. I mean, did you prepare them?

A. The first return I believe I worked on was the year 1944, and I did some checking of the year 1943 return. Of course, I knew of the partnership long before that time.

Q. Did you prepare the amended returns?

A. If I had anything to do with them, it was a recheck of the computations. I believe Mr. Jacob asked me to do that, after he prepared them.

Q. You know that the books and records deducted the same percentage of profits to Bill Hammond from the contracts that they did with respect to Mr. Petersen, isn't that right?

(Testimony of Garthe Brown.)

A. As I recollect, without checking, the amount to Mr. Petersen was deducted and then the amount to Mr. Bill Hammond was deducted.

Q. Are you sure about that?

A. I would want to check the books.

Q. Just refer to the books and tell us what amount was deducted [347] from the income of the Ross B. Hammond Company for profits to Mr. Petersen for the year 1942?

A. May I have the ledger there?

Q. Look at Journal Entry J-125.

Mr. Bischoff: You find it in your own way. You find the things he asks for wherever you want to find them.

Mr. Winter: I was going to save him a little bit of trouble.

A. What year are you referring to, Mr. Winter?

Q. I am referring to 1942, the profit which was deducted from the contracts on behalf of Mr. Petersen, the profit to Mr. A. V. Petersen for the year 1942. A. \$37,129.66.

Mr. Bischoff: Louder. A. \$37,129.66.

Mr. Winter: Q. What was the amount deducted on the books and records as profit to W. A. Hammond?

A. On this particular transaction, \$37,129.

Q. For the entire year?

A. I would have to go back and check it.

Q. Didn't you check that when you checked the records?

A. That is a year and two months together. I would have to go through my working papers.

(Testimony of Garthe Brown.)

Q. Will you show us from the books what percentage of profit Mr. A. V. Petersen was entitled to under his profit-sharing agreement? Before you answer that question, I will withdraw it. [348] Where was that deducted from, what contract?

A. From Jobs 208, 210 and 211.

Q. Just find how much was accrued to Mr. A. V. Petersen for the year 1942?

A. I believe it was \$37,129.60, the amount to Mr. Petersen on the books.

Q. Are you sure about that?

A. I would have to go through the working papers.

Q. What was accrued on the books to the salary account of Mr. W. A. Hammond? I will ask you to refer to Exhibit 33 and see if you don't find that entry there made. A. \$37,129.

Q. In other words, the same amount was accrued on the books to A. V. Petersen that was accrued to W. A. Hammond, although W. A. Hammond had a contract for 25 per cent of the total profits? A. That is correct.

Q. That is only 15 per cent of the profits for the year, isn't it?

A. That is correct, but to the extent of Mr. Hammond's participation in the business and partnership, that would not be reflected on the books because it had not been recorded.

Q. No capital account was ever——

A. No capital account for Mr. W. A. Hammond.

Q. No capital account was ever set up for his partnership profits until 1944, was there? [349]

(Testimony of Garthe Brown.)

A. That is correct. That is quite common in partnerships.

Q. I didn't ask you whether it was very common. I said none was set up, was there?

A. That is right.

Q. In other words, deducted from the contracts, and take a deduction from income of not only the profit to Mr. Petersen and Mr. Mason, but a profit of 15 per cent accrued to W. A. Hammond?

A. That is correct.

Q. No capital account appearing on the books?

A. That is correct.

Q. As a matter of fact, no capital account was on the books until 1945, was there?

A. I believe that is the year that was put on.

Mr. Bischoff: Do you still want the witness down here, Mr. Winter?

Mr. Winter: No. He may resume the stand.

Q. Did you attempt to make any adjustments of any part of the income of this company for the years 1942-1943? A. No.

Q. As a matter of fact, it was impossible to find out from the books or take from the books the value of any stock piles or work in progress as of the end of each year?

A. That is correct. The books show no inventory.

Q. It would be impossible to determine the profit on a strict [350] percentage-of-completion basis, wouldn't it? A. Mr. Winter—

Q. Just answer my question. Would it or would it not be possible?

(Testimony of Garthe Brown.)

Mr. Bischoff: He cannot answer. It is not answerable.

Mr. Winter: Q. Just answer my question. Would it or would it not be possible from the books to now compute the profit on the long-term contract upon a percentage-of-completion basis?

Mr. Bischoff: Objected to, may it please the Court. The test is the ability to make a report that would clearly reflect the income when a party makes a return; not now.

The Court: He may answer.

A. I will answer, yes, but I want to qualify that with a statement that, since inventories are not necessary, therefore we do not need them to prepare a return on the accrual basis.

Mr. Winter: Q. I did not ask you that. I said if you were going to report the profit from these long-term contracts on a strict percentage-of-completion basis, would it be possible to determine the profit on that basis from these books and records?

Mr. Bischoff: Objected to, may it please the Court, as immaterial. We do not claim that we reported on a percentage-of-completion basis, Your Honor. The issue here concerns only the question whether we have adopted the accrual method and whether it was properly kept.

The Court: He may answer, subject to the objection. [351]

A. From the books you could not report on a percentage-of-completion basis.

Mr. Winter: Q. In other words, the books were not so kept that you could report the true

(Testimony of Garthe Brown.)

income from these contracts on a percentage-of-completion basis? A. That is correct.

Q. Of course, it is your contention, as counsel for the plaintiff, representing the plaintiff at least in these proceedings, in the proceedings leading up to this, that under the accrual method of accounting it is not necessary, under the statute and regulations, to keep any inventory of stock piles at the end of the year or make any estimate of work completed but not billed at the end of the year. That is your contention?

A. It is our contention no inventories are necessary.

Q. Are you also contending that inventories are not necessary when the billing is based upon a percentage of the completion of the contract at the date of billing?

Mr. Bischoff: Objected to as immaterial in this case, Your Honor, because we are concerned only with the accrual method.

The Court: Answer.

(Question read.)

A. On the accrual basis of accounting, it is not necessary.

Mr. Winter: Q. It is your contention it was not necessary, in order to reflect the income, to make any estimate of uncompleted work or stock piles at the end of the year? That is your [352] contention?

A. That is correct. They billed each month and that would be included in the latest billing.

(Testimony of Garthe Brown.)

Q. Do you know of any other method, other than that adopted by the Commissioner, which would more clearly reflect the income during each taxable period?

Mr. Bischoff: Objected to as immaterial. We are concerned with what was done in this case.

The Court: He may answer.

A. I feel the method adopted by the taxpayer reflects it more fully than that adopted by the Commissioner, for the reason that the income from the period is all being reported as he is entitled to it; all accruals were taken into account; and it is as complete, I think for a taxpayer, as any other basis of accounting that he could adopt and truly reflects his income as closely as any other basis that he could adopt.

Mr. Winter: Are you basing that opinion—the method adopted by the Commissioner reflects the total income, reporting as to those contracts the percentage of profit in each year, based upon the work and labor performed in that year. You say that is not a good method?

A. That is right, because the percentage of money earned in a year on any job will vary. One particular contract might be very profitable; another might show a loss. The method adopted by the Commissioner would not reflect that. [353]

The other error in his method is that you are always going to have to go back and refigure the past two or three years in order to determine your income for any year, and that is not a good method of accounting.

(Testimony of Garthe Brown.)

The law requires that you determine your income each year and, therefore, because of that requirement, I feel the method adopted by the taxpayer does comply with that requirement.

Q. Regardless of the fact that a considerable amount of work had been done and money expended in one year for which he could not make a billing, because of some technicality, that would clearly reflect the income, is that right?

A. That is right.

Q. In other words, you think that more clearly reflects the income than if he showed a percentage of profit in each year?

A. That works in any line of business. You will see such distortions, as you call them, of income.

Q. If you have——

Mr. Bischoff: Let him get through.

A. I am familiar with one case of a tent manufacturer where, during their first year, they lost heavily and, in negotiations with the Government, they stated that it was only logical that when a contractor started that during the first year of operation he would have a liability because of the high rate and when he got into production he would begin to show a high rate of profit in the other years. [354]

Q. But this contractor had been in business since 1920?

A. That is correct, but on each job he had unprofitable parts and certainly his rate of profit is going to vary; depends on the portion of the job that the contractor is working on.

(Testimony of Garthe Brown.)

Q. Of course, you are very much interested in the result of this lawsuit, aren't you?

A. I haven't any interest in the result of it, Mr. Winter.

Q. You are a member of the partnership, Jacob, Jones & Brown? A. That is correct.

Q. You have been employed by the taxpayer; you were employed by Mr. Jacob to work on this case in 1946? A. That is correct.

Q. That is where you were paid your salary?

A. Yes, that is correct.

Q. And you say you don't have any interest in it?

A. Well, I have a natural interest in the taxpayer as a client, the same as I would any other client of the office, but so far as any added remuneration should this case be determined one way or the other, that would make no difference to me.

Q. As a matter of fact, when you filed the protest in this case, you were given opportunity to show on what basis it would more clearly reflect the income than that adopted by the Commissioner?

Mr. Bischoff: That is objected to as immaterial. We only have this one issue here.

The Court: He may answer. [355]

A. In filing of the protest, Mr. Jacob handled that part of it. I do not recollect being allowed to give the Government any other basis.

Mr. Winter: You went down and made your protest—made your investigation, rather, after the protest was filed?

(Testimony of Garthe Brown.)

A. Our investigation was made preparatory to the case coming on for trial, and it was set for pre-trial a year ago. We spent perhaps a month to familiarize ourselves with the books and the method of accounting employed, and also for the preparation of the protest there was an examination made.

Q. You say that a method of accounting, in connection with long-term contracts, which does not make any allowance for stock piles of materials on hand or percentage of work completed clearly reflects the income? That is your contention?

A. Clearly reflects the income over the years, that is correct.

Q. Supposing, Mr. Brown, that you adopt an accrual method of accounting in the books and that during the last three months in a year considerable work was expended, time and material and labor expended on the job, and no billings were made until the end of the year and, since no billings were made, no income was accrued: Would you say in that case the books clearly reflect the income on the accrual basis?

Mr. Bischoff: That is objected to, may it please the Court. It is purely hypothetical. That is not the situation here. There is no evidence in the record to support that hypothesis. [356]

The Court: He may answer.

A. If the taxpayer did not bill when he was entitled to bill, and let it go deliberately, that would not clearly reflect the income, but if he billed

(Testimony of Garthe Brown.)

his billings that he was entitled to over that period because of the terms of the contract, then, it would clearly reflect the income, because he would have received all he was entitled to receive.

Mr. Winter: Q. I am assuming that all the work during the past three months was such that under the terms of the contract considerable expense had been incurred, such as labor and materials,——

A. Yes.

Q. —but under the contract it was not possible to bill for all the work and labor and materials until after the first of the next year, and the accounts were kept on an accrual basis: Would you say, in that event, the books would clearly reflect the income?

A. Again, over the years, they would.

Q. Over a period of years but not during the taxable period, during the last three months?

A. If such was the case under your hypothetical question and if considerable money were spent in that year, obviously not.

Q. In other words, if \$1,057,409.83 was spent in the first nine months, I mean spent during the year, in the cost of labor and materials on a job, but they could not bill for the last three [357] months for unfinished work or work which had not been accepted as yet because of some minor defects, would you say that the income during that year would be clearly reflected?

A. Are you referring to our case now?

Q. I am referring to a situation such as this.

(Testimony of Garthe Brown.)

Mr. Bischoff: Objected to as purely hypothetical, in nature, not within any issue in this case.

The Court: You will have a chance to present your case.

Mr. Winter: I was using substantially the figures in this case but I am using them as a hypothetical question.

The Court: Yes.

Mr. Winter: I want to shorten it if I can.

The Court: You are using one of the contracts in this case?

Mr. Winter: Yes, I am using the figures in the Troutdale contract. I am assuming them for the purpose of my question.

The Court: Treat it as if it applied to the Troutdale contract.

A. If the work were not billable at the time——

The Court: You know what the facts are.

A. In that particular case, since the work had been billed, they do clearly reflect the income on that portion of that particular job.

Mr. Winter: Q. Would it not indicate to you that considerable more work had been done than the amount for which they were able to bill? Wouldn't that be indicated to you? [358]

A. In that particular one, Mr. Winter, we checked and we found they were not able to bill any more; they had billed everything they could; as a matter of fact, they sustained a loss on that particular contract.

Q. There is no record in there anywhere as to work partially completed as of December 31st is

(Testimony of Garthe Brown.)

there? Is there anything in the books to show what stock pile was on hand December 31st on that job?

A. Mr. Winter, you know——

Q. Answer my question.

A. There was nothing on the books to determine the stock pile.

Q. In Troutdale? A. Yes.

Q. And there was nothing in the books that you found which would show uncompleted work for which they could not bill as of that date, was there?

A. That is correct.

Q. Nothing in the books to show, in connection with any of the contracts, the amount of stock pile or uncompleted work for which they could not bill?

A. That is correct.

Mr. Winter: That is all.

Redirect Examination

By Mr. Bischoff:

Q. Mr. Brown, was there anything in the books to indicate that [359] there was in fact any stock pile?

Mr. Winter: Object to that.

A. Nothing to indicate it.

Mr. Bischoff: Just a moment.

Mr. Winter: He is not asking for something on the books. He is asking for something that is not on the books.

The Court: Go ahead.

A. Nothing on the books to indicate that there was any inventory of stock piles.

Mr. Bischoff: That is all.

(Testimony of Garthe Brown.)

Recross Examination

By Mr. Winter:

Q. There was nothing on the books about any inventory of stock piles? A. That is correct.

Q. The books were absent of any reference to that? A. To any inventory, that is correct.

The Court: Step down.

Mr. Winter: Q. But every cost that had been incurred, whether paid or not, had been accrued?

A. That is correct.

Q. All labor up to December 31st?

A. That is correct.

Q. All materials ordered or billed up to December 31st? A. That is correct. [360]

Q. As to whether or not it was a part of any of these estimates, you would not know, would you?

A. We checked those and determined the estimates were billed as far as could be billed.

Q. In accordance with the contracts?

A. In accordance with the contracts.

Mr. Winter: That is all.

The Court: Step down.

(Witness excused.) [361]

FRANK H. EISEMAN,

was thereupon produced as a witness on behalf of plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Bischoff:

Q. Where do you live, Mr. Eiseman?

(Testimony of Frank H. Eiseman.)

A. Portland, Oregon.

Mr. Winter: I didn't get his name.

The Clerk: Frank H. Eiseman.

Mr. Winter: What is the first name?

A. Frank H. Eiseman.

Mr. Bischoff: Q. What is your profession?

A. I am a Certified Public Accountant.

Q. How long have you been living in Portland?

A. I have been in Portland since March, 1940.

Q. Are you a member of any state or national organization of Certified Public Accountants?

A. I am a member of the Oregon State Society of Certified Public Accountants and I am also a member of the American Institute of Accountants, which is a national organization of Certified Public Accountants.

Q. How long have you been engaged in the accounting profession?

A. Some fourteen years.

Q. When did you become a Certified Public Accountant?

A. I passed my examination in the fall of 1945. [362]

Q. Where have you practiced your profession?

A. I was engaged for a short while with Whitcomb, Buell, Stratford & Company in the Pacific Building, here in Portland, Oregon, and for four years I was connected with Piepenbrink & Kron, accountants in this city.

Q. Are both of these firms accountants in this city?

(Testimony of Frank H. Eiseman.)

A. Yes. They are both firms of Certified Public Accountants. Since the first of this year I have had my own office.

Q. Mr. Eiseman, did you, at my request, make an examination of the books and records of the Ross B. Hammond Company?

A. Yes, sir, I did.

Q. When did you begin to make the examination?

A. You told me of my engagement on the 31st of December, 1947.

Q. Did you go to work on the examination at that time?

A. I started some of the preliminary work on that very day.

Q. At the time you were employed to make the examination, were you given the Revenue Agent's report in this case?

A. Yes, I was.

Q. That is the report for the year in which this controversy was involved?

A. The report I was given for the year, the combined years of 1942 and 1943. I believe it is called 1943 on the report.

Q. I show you Exhibit 20 and ask you if that is the Revenue Agent's report that was submitted to you for your study?

A. Yes. I saw a photostatic copy of this report. [363]

Q. Did you familiarize yourself with the contentions that were being made in that report?

A. Yes, sir, I did.

(Testimony of Frank H. Eiseman.)

Q. In making that examination of the records, did you do so for the purpose of determining the facts pertinent to these questions that are raised?

A. Yes, sir, I did.

Q. In connection with the examination, did you examine the income tax returns for the tax years referred to in this Revenue Agent's report?

A. I examined the retained copies of the tax returns filed for the years 1939, 1940, 1941, 1942, 1943 and 1944.

Q. State what examination you made of the records? Did you go down to the office of Ross B. Hammond Company?

A. Yes, I went down to the office of the Hammond Company. I was given the general ledger, the journals, the trial balance book and other supporting records I asked for which I felt were necessary for the purpose of the examination I was making.

Q. Did you examine the monthly estimates?

A. Yes, I did.

Q. And all the contracts that were referred to in the Revenue Agent's report?

A. I did not examine all the estimates but I examined some of the estimates on the contracts referred to in the Revenue Agent's report. [364]

Q. Did you examine them sufficiently to state the manner in which they were gotten up and the information they purported to present?

A. I examined several sufficiently to satisfy myself of the method employed in making up the

(Testimony of Frank H. Eiseman.)

estimate and recording them on the books of the company.

Q. Did you make what we might call a partial test check or partial test checks of these monthly estimates into the books to see how they were handled?

A. Yes. I made certain test checks in that regard.

Q. State how long you were engaged in making that examination and to what extent you made the examination of these records?

A. I worked a great deal since December 31st on the examination of the books and records of the company, to the end of last week. The examination was made for the purpose of determining whether the method employed was an accrual——

Q. Did you examine the records for the purpose of determining whether the method employed was consistently followed through the years that you referred to?

A. Yes. That was another purpose of the examination, and I further compared the profits shown on the books with the profits shown on the tax returns.

Q. From the examination that you made, Mr. Eiseman, are you able to state the method of accounting that had been used by the Hammond Company for the years 1939 to 1944, inclusive, was the [365] accrual methods?

A. Yes. The method of accounting since 1939 was the accrual method.

(Testimony of Frank H. Eiseman.)

Q. What did you find from the examination as to the consistency in the maintenance of these accounts during those years?

A. The accrual method was consistently followed on the books.

Q. I call your attention to the list of separate accounts set up on the books of the company as they are reflected in the balance sheet book during the years in question, and ask you to state whether the list of accounts that were set up is proper and adequate for the maintenance of the accrual system of accounting?

A. The trial balance book indicated that the accounts which are important for an accrual method were all kept. I am here referring to accounts payable, accounts receivable, accrued expense, accounts like accrued Federal Social Security, accounts like unemployment compensation, and accrued interest payable and other accounts of this type. Would you want me to read these accounts?

Q. It is not necessary. They have been read into the record, so it is not necessary to repeat them.

Are you able to state whether the income tax returns, as they were made, for the years 1939 to 1940, were in accordance with the accounts as they were kept?

A. Yes, they were.

Q. Did you check to see whether the figures of profit or loss, if any, were exactly as they are in the books? [366]

A. I found in one of the later years a small discrepancy, which was in favor of the Government

(Testimony of Frank H. Eiseman.)

against the taxpayer. The income was slightly overstated on the tax return compared to the books, but otherwise I found full agreement.

Q. How much was the amount of the error?

A. I think some \$300.

Mr. Winter: I do not see the materiality of that.

Mr. Bischoff: Are you able to state from your examination of the books that you made and of the tax returns made upon those books whether the accounts as kept, clearly reflect the income?

Mr. Winter: Objected to as calling for a conclusion of the witness. I don't think this witness can so testify.

The Court: He may answer.

Mr. Winter: He can testify, as an expert, as to what the books show, but as to whether they clearly reflect the income, that is a matter for this court.

The Court: He may answer.

A. The method employed for the years in question clearly reflected the income within the meaning or in accordance with the Internal Revenue Code and regulations.

Mr. Bischoff: You may cross-examine.

The Court: Before you start in, is this some kind of a test case the Commissioner is making?

Mr. Winter: No, Your Honor, it is not a test case at all. The Commissioner is authorized under Section 41, where books are [367] so kept that the income of the taxpayer is not clearly reflected in his returns, to require the taxpayer to keep such

(Testimony of Frank H. Eiseman.)

records or adopt his own method in arriving at the income.

It is the Government's position that they attempted to go on an accrual basis, and they reported on a percentage-of-completion basis, and they got kind of a hybrid situation. I think the record will show——

The Court: "High-bred" or "hybrid"?

Mr. Winter: I don't understand.

The Court: I don't understand you.

Cross-Examination

By Mr. Winter:

Q. Mr. Eiseman, you say the accounts, the books were kept on an accrual basis? A. Yes.

Q. They accrued all liabilities, such as labor and material, that went into the contract as of December 31st, the end of each year?

A. I am talking about the method, not about the accrual dates.

Q. You say the method of accounting was on an accrual basis and, as a matter of fact, the books reflected that they did accrue——

Mr. Bischoff: Answer, instead of shaking your head.

Q. (Mr. Winter): The books did accrue all accounts payable, labor and material, as of the end of each year?

A. The books showed that there were accounts payable. [368]

Q. Yes. Did you check the accounts payable to see whether all these accounts were properly accruable in the years in question?

(Testimony of Frank H. Eiseman.)

A. I did not confirm any of the accounts payable to make sure all accounts payable were set up. I didn't think that a part of my task in this particular case because small errors would not prevent a taxpayer from being on the accrual basis.

Q. I didn't ask you what you thought. I asked you whether or not you did.

A. I did not confirm that all accounts payable had been set up.

Mr. Bischoff: Let his finish.

Mr. Winter: You say you examined a few of the billings. Those billings were all based on the engineer's estimate attached to the billings, weren't they? A. Yes.

Q. How was the profit on the contracts kept on the books? Would you say that was on a strict accrual method of accounting?

A. In my opinion it was.

Q. Were any adjustments made in the books or was there anything in the books to show that any adjustments were made for stock on hand, stock piles on hand, at the end of the year, or unfinished work?

A. I did not find any, but according to the Commissioner's—According to the Code and regulations, that does not appear to be necessary.

Q. I am not asking about the regulations, what the regulations [369] provide. I say: Is there anything on the books to show that?

A. I didn't find any.

Q. As to the books, if there was a million dollars in uncompleted work for which no billings had

(Testimony of Frank H. Eiseman.)

been made, that would not be clearly reflected income in the year in which the costs had been accrued, would it? A. Apparently not.

Q. Did you examine the books? You had the cash journal for 1938. What method of accounting is shown in the books for 1938?

A. What book are you referring to?

Q. What system of accounting do the books reflect was used in 1938?

A. My examination did not go into that very detailed, but there is some question in my mind whether there was any particular method, as here contended in this court, now, employed in the year 1938.

Q. I am not asking you to pass upon the testimony in this court. I am asking you, as an expert, to tell me what method of accounting was employed by this company in 1938.

A. I was just trying at the time to tell you my opinion about it. I understand that the contract for the State Capitol was kept on the percentage-of-completion basis, but I found a very important difference between the method described in the regulations and the methods employed in this particular year. If I may have a copy of the regulations and perhaps a copy of the returns, [370] I can explain.

Q. I didn't ask you about the regulations. I asked you if you could tell me what method of bookkeeping was employed, in your opinion, by the company for 1938. Can you answer that question Yes or No? Can you tell me?

(Testimony of Frank H. Eiseman.)

A. I don't think there was any particular method used in the year 1938.

Q. You don't think there was any particular method?

A. No. I found a combination of various methods.

Q. Weren't the books kept on an accrual method of accounting as they were in prior years?

A. The income and expenses evidently were accrued but the income—the income from the State Capitol job was not reported on any clear method as it is explained in the Code and regulations.

Q. On what method of—On what method was the long-term contract of the Capitol Building reported in 1938 and 1939?

A. As I mentioned before, it was not a clear-cut method according to the Code and regulations.

Q. Was it a percentage-of-completion method of reporting on that contract?

A. It was not a percentage-of-completion method as described in the Code and regulations.

Q. In what way, in your opinion, didn't it comply with the percentage-of-completion method?

A. The Code and regulations provide that on any uncompleted [371] contract which is to be reported on the percentage-of-completion basis, the percentage of completion should be applied to the income received, and then, from this income received, as computed, the actual expenses should be deducted. This was not done.

Q. Well, all right.

(Testimony of Frank H. Eiseman.)

Mr. Bischoff: Just a minute. I object to counsel interrupting the witness until he gets through with his answer.

The Court: Continue.

A. This was not done on the return. The income reported from the State Capitol job was not shown in this manner on the return for 1938. The manner in which it was done was that the total income received, according to the estimates, was taken and from it deducted the total expenses incurred up to date, plus the estimated expenses to complete the job, and this estimated profit then was multiplied by the percentage of completion, and this method is not in accordance with the Code and regulations for the year 1938.

Q. (Mr. Winter): Was that the method employed by the company prior to 1938 in reporting the Capitol job? A. I didn't check that.

Q. Then you say there was a hybrid method—there wasn't an accrual method but there was a hybrid method used in 1938 in reporting the income?

A. I believe you might call it that. I should say, further, there was another contract started in the year 1938 and, if the [372] taxpayer would have been on a clear percentage-of-completion basis, he would have had to report certain profit or loss on that particular contract, which he did not do. That indicates to me that he was not really on the percentage-of-completion basis, as the Commissioner described it in the regulations, for the year 1938.

(Testimony of Frank H. Eiseman.)

Q. For the year 1939—Will you refer to the taxpayer's return? What does "percentage of completion" mean on the 1939 return? What does that mean, in your opinion?

A. I don't see any percentage of completion in 1939.

Q. You see "portion of completion" under these contracts, the Capitol Building—

A. I think you are referring to the year 1938 that you want me to look at.

Q. No, I want you to look at 1939.

A. 1939 does not indicate—

Q. What contracts are shown there?

A. Balance of the State Capitol, University of Oregon Library, alterations to the Morgan Building, main barracks building, St. Vincent's Hospital alterations, alterations to the Arlington Club, repairs to Multnomah Civic Stadium.

Q. Doesn't that balance refer to the percentage of completion that was not reported in the previous year on the Capitol Building?

A. The income tax return for the year 1939 does not indicate [373] anything about that.

Q. What does it say as to the Capitol Building?

A. May I read it to you?

Q. Yes.

A. State Capitol Building, Job 193—

Q. Yes.

A. —final contract price, \$2,072,012.58.

Q. Yes.

A. Cost: Labor, \$176,003.94; materials, subcontracts, insurance, et cetera, \$1,778,091.02, and then \$112,406.52; a total cost of \$2,060,556.48, and this,

(Testimony of Frank H. Eiseman.)

deducted from the contract price, leaves a profit of \$5,457.10. There is no mention made of percentage of completion.

Q. That is the balance or percentage of the building was completed in that year, isn't that right? A. That is my understanding.

Q. In other words, that is the percentage of completion, the final completion of the building, and about 90 per cent had been reported in prior years on a percentage-of-completion basis?

A. The tax return for 1939 does not indicate anything about percentage of completion. I think the figures you mentioned are on earlier returns.

Q. When you compare that return with the 1938 return, it shows the final percentages of completion?

A. If I may say so, it means the same thing, approximately. It [374] is the balance of the profit which had not been reported in prior years.

Q. On a percentage basis?

A. On whatever basis they had been using. If it was a percentage basis, yes, but I don't think it was a percentage basis, in agreement with the Code and regulations.

Q. Refer to the next contract.

A. You want me to read that?

Q. Yes.

A. University of Oregon Medical School Library, Job 194.

Q. Yes.

A. Contract price, \$332,642.16, less cost of labor, \$61,399.21, materials, subcontracts, insurance,

(Testimony of Frank H. Eiseman.)

et cetera, \$242,625.03, total cost \$304,124.84. This, deducted from the contract price, leaves a profit of \$28,517.32.

Q. Read the next one.

A. Alterations to Morgan Building, Job 195: Fixed fee, \$1,726.61, less \$850.85 which, deducted from the fixed fee, leaves two thousand—pardon me. May I correct that? Added to the fixed fee gives a profit of \$2,577.46.

Q. What was the amount of the fixed fee?

A. \$1,726.61.

Q. Read the next one.

A. Main barracks building, Job 196. Portion of contract completed—— [375]

Q. Read that again, “Portion of contract completed.”

A. Portion of contract completed,—Let me finish.

Q. I want you to read that wording again.

A. “Portion of contract completed in 1939,” as per War Department certificate, \$752,082.54, less cost of labor \$179,868.56, materials, subcontracts and insurance, et cetera, \$545,089.52, total cost \$724,958.08, leaves a profit of \$27,124.46.

Q. In other words, in reporting the income from that contract for 1939, the taxpayer kept the books on an accrual basis, you say, is that right?

A. That is my opinion.

Q. Then, he reports on the portion of the building completed as per——

A. ——per the certificate.

(Testimony of Frank H. Eiseman.)

Q. In other words, he is reporting his profit on the percentage of the completion of the building, isn't that right?

A. I don't think that is necessarily the same.

Q. What?

A. I don't think that is necessarily the same.

Q. That is not necessarily the same?

A. No.

Q. But he kept reporting it on that basis?

A. My understanding is that it is not the same in many cases.

Q. It is not the same in many cases?

A. No. [376]

Q. You are familiar with the fact that many taxpayers report their long-term contracts on a percentage-of-completion basis and keep their books on an accrual basis?

A. They accrue items of expense and accrue income, but that does not mean that they are on the accrual basis for the purpose of reporting long-term contracts.

Q. What do you contend or understand is the difference between the accrual and percentage-of-completion basis, if any?

A. It is the substance of this whole discussion. On a percentage-of-completion basis, one of the conditions is that we have to take inventories into account. On the accrual method for construction contracts, the Commissioner does not require any inventories, and there are other conditions which may come up under certain circumstances, but I

(Testimony of Frank H. Eiseman.)

think that is one of the basic differences between the two methods.

Q. In other words, you think the Commissioner only requires the use of inventories with respect to mercantile goods where the taxpayer is keeping his books on the accrual method of accounting?

A. Mercantile and manufacturing companies.

Q. You say that is the only time the Commissioner may require a taxpayer to keep an inventory at the end of the year and make an adjustment for the work completed for which no billing has been made?

A. In a general way, yes. There may be a few more types of [377] business that we have not mentioned here, and which I might be able to think of, but generally you are right on that.

Q. If, for example, a taxpayer keeps his books on a strict accrual method of accounting, that is, he has accrued all his work, labor and materials, and he did not make any billings for three months prior to the end of the year, and, therefore, did not accrue any income, do you think such a method of accounting would clearly reflect the income?

A. If he had the right to receive this money, then he should have accrued it on the books. "Accrue" means to show it on the books, show income on the books when he has the right to receive it, when the right to receive it is established—the right to receive and the amount to be received is established.

Q. Suppose, for some reason, under the contract the engineer refused to approve an estimate,

(Testimony of Frank H. Eiseman.)

although the work has actually been completed, and it is not approved until the end of the year. Would you say that would not result in a distortion of income for income tax purposes?

A. No doubt it would be in the taxpayer's interest to get approval if there is justification for it, and he would fight for it as much as he could. Assuming an engineer would not, for certain reasons, give him a certificate, because the workmanship was faulty, there evidently cannot be any accrual.

Q. If the taxpayer wanted to shift his income into a subsequent year and could properly not seek getting a certificate, he could [378] then just fail to get a certificate approved and thereby put the income over into the subsequent year. You say if the taxpayer were so inclined he could do that?

A. Theoretically, it might be the case but here, in this particular case, Mr. Hammond indicated that he needed all the money he could possibly get to finance his contract, and he put his billings in just as soon as he possibly could.

Q. Mr. Eiseman, I didn't say Mr. Hammond did it. I said, supposing a contractor kept his books on a strict accrual method, and only accrued these amounts for which he billed, without taking into consideration the work and labor performed on unfinished portions for which he could not bill, if he just failed to get a certificate and failed to bill them until after the end of the year, he could then effectively shift his income into the next year, isn't that right?

(Testimony of Frank H. Eiseman.)

A. If he had a right to receive the money, if he had a right to receive the certificate of the architect, he should have accrued it. If he failed to obtain a certificate, that in itself does not mean that he should have accrued it.

Q. I am not talking about whether he should or should not have. I say, he could then shift his income or substantial income into the succeeding year, if he were so inclined?

Mr. Bischoff: We have no charge of fraud or evasion, your Honor, or even a suggestion of it in the Revenue Agent's report, that any item was shifted from one place to another for the [379] purpose of evading tax. Why should we be trying that issue here?

The Court: Go ahead, Mr. Eiseman.

(Question read.)

A. Since he had the right to receive the certificate of the architect, it would be an accrual item. Just the fact that he had not asked for the certificate in itself would not mean that it should be accrued.

Mr. Winter: Q. Supposing a taxpayer made a constant practice of not accruing any items unless he had actually billed—

The Court: We will recess until one-thirty.

(Thereupon a recess was taken until 1:30 o'clock p.m.)

(Testimony of Frank H. Eiseman.)

Court reconvened at 1:30 o'clock p.m., Thursday, January 15, 1948.

Cross-Examination—(Continued)

By Mr. Winter:

Q. Mr. Eiseman, at the time of recess we were discussing what you considered the distinction between an accrual method of accounting and the percentage-of-completion basis.

Under the accrual method of accounting, where a taxpayer is reporting on long-term contracts, is it proper to accrue the value of the work in progress at the end of each year for which no billing has been made, but where all the expenses in performing that work in progress had been accrued? [380]

A. May I clarify something first in my mind before I answer that? Do I understand that you said "Under the accrual method"?

Q. No, I will reframe the question.

A. You are talking only about percentage of completion?

Q. I am talking about the accrual method.

A. Talking about the accrual method?

Q. Supposing a taxpayer keeps his books upon the accrual basis of accounting, on that method of accounting, where he is reporting on the accrual method, long-term contracts, is it proper to accrue on the books the value of the work in progress at the end of the year for which no billing has been made to the owner, but concerning which work considerable costs and expenses have been incurred and accrued on the books?

(Testimony of Frank H. Eiseman.)

A. If he was not entitled to receive any money over and above what he had billed, and he consistently followed that method, I think that would have been the proper thing to do.

Q. In other words, you think a proper method of accrual would be if he had expended one million dollars, for example, in completing work which lacked probably 2 per cent more to complete before he could make a billing, and he then billed after the end of the year, you say it would be a proper method of accounting not to accrue the value, regardless of whether he could bill it under his contract or not?

A. I think, as a matter of fact, contracts are never written—at least, I never, in my practice, have run across a contract of [381] this type, that billing has to be withheld until the final completion of the building. The contracts I have seen in my practice always have been on such a basis that billings could be made before the contract was completed, if there was a contract.

Of course, if the contractor goes ahead and locates a building on somebody else's ground without having any contract, that is a different story. What can happen, especially if this contract is with the Government—it could happen he never will be reimbursed for it; it could happen that the person who told him to go ahead would be removed from the position he occupied and none of his verbal commitments would be binding upon the Federal Government. It would be very questionable whether he ever could collect on this particular contract.

(Testimony of Frank H. Eiseman.)

But, providing there is a contract, according to the contracts I am familiar with, there is always a possibility to bill some portions of the money expended before the contract is finally—before the building is finally completed.

Q. All right. Supposing that the contract provided that he would be able to bill the owner based upon the material which was put into a building, plus the labor which was actually put in the building, on completion of one unit, for example, that cost one million dollars, but the contract provided that until the unit was completed he could not bill the owner—he could not bill the owner until that one unit of the contract was completed, and he had spent one million dollars in 1942, but it was [382] not completed to the extent that it could be billed until 1943. Would it or would it not be proper to the accrual method of accounting to accrue the reasonable value of the labor and materials that had been expended in 1942, the actual value?

A. I am not familiar with any type of contract—

Q. I say, if those were the facts.

A. Assuming that there would be a contract of that type—

Q. Yes.

A. —we would have a very similar situation to where the contract could be on a completed-contract basis. We have there also, maybe two or three years before the final completion of the contract, certain profits that might have been made being deferred to the very end, to the final completion of the contract.

(Testimony of Frank H. Eiseman.)

It may be somewhat contrary to logical thinking, but if the contractor continuously follows that method, I think it reflects, over the years, the proper income.

In the same way here, if the contractor continuously follows one method, to deviate from that particular method certainly would be the wrong thing to do. I think consistency is one of the important things in accounting.

Q. In 1938 the taxpayer in this case reported his income on the Capitol Building on the basis of the percentage of the completion of the total contract, didn't he?

A. Not in accordance with the Commissioner's rule.

Q. I say, that is what he reported, isn't it, on the basis of [383] percentage of completion?

A. Some method of percentage of completion but not the method prescribed by the Commissioner.

Q. I didn't ask you whether it was the method prescribed by the Commissioner, but the taxpayer, did he not, in his books and records and on his return, reported his income on the Capitol Building on the basis of percentage of completion of the total contract? Answer that yes or no, did he or did he not? A. Yes.

Q. He also reported the percentage of completion of the total contract in his return for 1939, didn't he, on the Capitol Building?

A. He reported the balance of the unreported profit.

(Testimony of Frank H. Eiseman.)

Q. That was the balance of the percentage of the total contract, wasn't it? A. Yes.

Q. He had already reported 98 per cent of the percentage of the contract in prior years, 1936, 1937 and 1938, hadn't he? A. That is correct.

Q. In 1939 he reported the balance of the percentage of the total contract, which was completed then, on his 1939 return? A. That is correct.

Q. And with respect to that other contract you were reading from, he reported the portion of the completed building on his return in 1939. That is what he says in his return, doesn't he? [384]

A. Not in those words. He reported that portion which he was entitled to bill. He showed that particular portion of the income which he was entitled to bill at that particular time.

Q. In 1939 the taxpayer reported the portion of the contract completed in 1939 on the United States War Department barracks?

Mr. Bischoff: He went over that, your Honor. He went over that matter and had the witness read off these items, and the witness was examined concerning them. I do not see any reason for a repetition of this matter.

Mr. Winter: Q. Were the estimates of the engineer based on the portion of the building that was completed?

A. I am not familiar with that particular contract.

Q. On any of the contracts were the estimates based upon the percentage of completion of the contract?

(Testimony of Frank H. Eiseman.)

A. Not necessarily. It depends upon the terms of the contract.

Q. Are you familiar with the terms of these contracts?

A. I have looked at some specifications of the Government contracts, general specifications of Government contracts.

Q. Under the Defense Plant Corporation contracts, he was entitled to reimbursement of 75 per cent of the amount of completed work, isn't that right?

A. I am not—

Q. To bill for?

A. I am not familiar with that particular contract.

Q. If he was only entitled to bill the owner for 75 per cent of [385] the amount completed in a year under the accrual system of accounting, wouldn't it be proper to accrue the value of the 25 per cent for which he could not bill, at the end of the taxable year?

A. That was a proper accrual method and, according to my investigation, that was done.

Q. Couldn't bill for the 25 per cent. The engineer could only allow them to bill for 75 per cent of the work which was completed, although he had to spend the cost of completing 100 per cent of it, isn't that right?

A. This particular 25 per cent was retained only.

Q. No, I am not talking about retained percentages, now.

Mr. Bischoff: Finish your answer, Mr. Eiseman.

(Testimony of Frank H. Eiseman.)

Mr. Winter: Q. I am not talking about retained percentages.

A. I don't understand your question then, very well.

Q. You understand, for instance, here is 10 per cent retained percentage on the contract; 10 per cent retained? A. Yes.

Q. There is also the 75 per cent that they will pay, based upon the engineer's estimate, isn't that right?

Mr. Bischoff: I object to the witness being interrogated about the contents of the contract. He did not purport to testify he was familiar with the provisions of the contracts. We don't even know whether Mr. Winter is correctly stating to him the import of the provisions with respect to payment.

The Court: If he doesn't know, he can just say so.

A. Yes; I am not familiar with this particular provision which you are mentioning.

Mr. Winter: All right.

Q. If the contract provides that 10 per cent of the contract price shall be retained by the owner and that the contractor is only entitled to bill the owner on the basis of 75 per cent of the amount of work completed on the contract, would it or would it not be proper to accrue the 25 per cent difference between the amount of completed work and the amount of the engineer's estimate?

Mr. Bischoff: Objected to, your Honor, as immaterial and on the ground that it is not the proper hypothesis involved in this case.

(Testimony of Frank H. Eiseman.)

Mr. Winter: The contract is in evidence.

The Court: What contract does that apply to?

Mr. Winter: That is the Defense Plant Corporation.

Mr. Bischoff: I prefer to have counsel read the provisions of the contract, so we will know what we are talking about.

A. I am not familiar with any provision of the type you mentioned here. I probably would have to study the contract first before being able to give you some opinion.

The Court: Which contract so provides?

Mr. Winter: The Defense Plant Corporation contract. The taxpayer is reimbursed 75 per cent of all materials located on [387] the site at the close of each month.

Mr. Bischoff: Where do you find in there that that is in addition to the 10 per cent retained percentage provision? Just read anything of that kind in there.

Mr. Winter: Article 15. "Payments: Unless otherwise provided in the contract, the owner shall make partial payments as the work progresses as follows: Upon appliaction by the contractor and certification by the architect-engineer, and approved by owner, owner shall make monthly payments to the contractor of 90 per cent of the value of labor and materials incorporated in the work and 75 per cent of all labor and material stored at the site up to the first day of the month as estimated by the architect-engineer, less the aggregate of all pre-

(Testimony of Frank H. Eiseman.)

vious payments, provided that the aggregate of all monthly payments shall not exceed 90 per cent of the contract price.

“Upon completion and acceptance by the owner of all work required hereunder, the amount due the contractor under this contract will be paid upon the issuance of the architect-engineer’s final certificate, after the contract shall have furnished the owner with a release of all claims against the owner arising under—” and so forth.

Mr. Bischoff: The 75 per cent refers to materials not incorporated.

Mr. Winter: That is what I said.

Mr. Bischoff: It was not included in your question. [388]

Mr. Winter: Ninety per cent where it is included in the building and 75 per cent where it is in stock piles.

Mr. Bischoff: That is what you say now.

Mr. Winter: Yes.

Mr. Bischoff: That is not what you said before.

Mr. Winter: Q. Wouldn’t it be proper to accrue the materials on hand—Don’t look at Mr. Bischoff. Look at me.

A. I am looking at you, Mr. Winter.

Q. Wouldn’t it be proper to accrue that percentage in accruals at the end of the year?

A. It all depends upon the method which had been followed in prior periods. The basic thing, in order to clearly reflect the income, is that the method is consistently followed over the years, and it is

(Testimony of Frank H. Eiseman.)

my understanding that this method has been followed in prior years to set up these retained percentages.

Q. Was it followed in 1938 and 1939?

A. I did not check any items in 1938 as to that regard. I would have to look at the books first to determine that question.

Q. Was a different method of accounting set up for 1939, 1940 and 1941 than was set up for 1938?

A. I think I have testified to that, what the accounting method was in the year 1938.

Q. Do you know what method of accounting was authorized for the year 1938?

A. I saw only the letter, the final letter of the Commissioner, [389] which was dated some time around May, 1938. I did not see the previous correspondence.

Q. Is it your understanding that a different method was employed in 1939, 1940 and 1941 than was employed in 1938? Is that your understanding?

A. I believe I testified to that before, that there was no clear method used in the year 1938.

Q. How were the books kept?

A. Accruals of income and accruals of expense were used in the year 1938.

Q. And the accrual method of income and expenses was used in 1939, too? A. Yes.

Q. The accrual method of income and expenses was also used in 1940?

A. Yes, but there is a difference in the way—Perhaps there is a difference in the way the contracts were reported. You refer to two different things.

(Testimony of Frank H. Eiseman.)

Q. You mean they made a change in the method of reporting on the contracts from what they had in 1938, is that what you mean?

A. We are talking about the difference between one job, the State Capitol job, and all following jobs. As I explained before, there was one contract started in 1938 which was not reported on the same basis as the Capitol job.

Q. How were the books kept in 1938? Was it on an accrual [390] method or was it on a percentage-of-completion method? The books, I mean.

Mr. Bischoff: Your Honor, I think at this time it would be appropriate for counsel for the defendants to now state their position with respect to the 1938 method as compared to the 1939 and subsequent years method, because the Revenue Agent's report denied us the right to use the accrual method in 1939 and subsequent years, because he says in 1938 he used the percentage-of-completion basis. Therefore, he says, we had to continue on that basis. That is what he says. Those are his words.

Now, he says, "You did not have a right to use any other but the percentage-of-completion basis, because you did not get consent."

From the examination that has been going on here ad infinitum upon this subject, it now appears that they want to take the position that 1938 was the accrual method the same as 1939. If that is their position, they ought to say so now so we will know where the examination is leading us to, so I may know whether I have to question him about that and your Honor will be able to know whether you are

(Testimony of Frank H. Eiseman.)

to go back to the existence or non-existence of a consent or the necessity for a consent to change the method. I think the case has gone far enough that they should take a position as to that.

Mr. Winter: Since the pre-trial and since the introduction in evidence of the letter requesting the Commissioner for a [392] determination of the method upon which they could keep books in 1938, counsel has made a right-about turn.

Mr. Bischoff: No, I didn't.

Mr. Winter: They introduced the 1938 income tax return, demanded everything from 1938 to 1944 in their subpoena duces tecum. He is now trying to eliminate 1938 and, while we might have made some mistake back there, we want to show that that same method was adopted, and that is that an accrual system of accounting was kept but not the true accrual and that they did not, in reporting the profit on contracts, adopt either a pure-bred accrual method or a pure-bred percentage-of-completion method.

Mr. Bischoff: What do you now claim the 1938 method was?

Mr. Winter: The method used by the taxpayer in 1938, just as he states in his letter.

Mr. Bischoff: What do you claim for it?

Mr. Winter: Just as the taxpayer said in his letter—I will read it.

Mr. Bischoff: We are entitled to have a statement of their position.

Mr. Winter: Yes. This is our position:

(Testimony of Frank H. Eiseman.)

“In accordance with the requirements of Article 42-4—” This is in March, March 3, 1938—” . . . application is hereby made for permission to account for profits upon contracts performed by this company upon a basis of percentage of the contracts [392] completed within each calendar year. Doubtless, this request is not necessary as no change is being made in the accounting method heretofore employed,” in view of the fact that the corporation’s books have been kept on an accrual basis and the individual books of Mr. Hammond kept on a similar basis.

If they had reported the true percentage of completion on their contracts, we would not be here, because there would not be this serious distortion of income.

That is what they asked the Commissioner to do and the Commissioner said “You can keep your accounts on an accrual basis”, and they have kept their accounts on an accrual basis, but they have not made any allowance for stock piles of material. If they accrue considerable in one year, a million dollars in one year, and they only accrue twenty-five thousand in another, it is just distorted income. There is no relationship, the way it has been reported, to the actual profit in any one year under any contract. In one year, if the Court please, as I pointed out, they had an \$8,000 income and no costs. Ridiculous.

Mr. Bischoff: May I read from the Revenue Agent’s report which is the basis upon which this adjustment was made?

(Testimony of Frank H. Eiseman.)

“In the taxpayer’s 1938 return the profits earned from the contract—” referring to the Capitol contract— “—were reported on the basis of percentage of completion. The computation was made in the return by estimating the total profit to be received from the contract, applying thereto the per cent of [393] completion, as determined by the engineers, (98.3), and deducting from the result the profit reported by the corporation. The estimated profit was determined by subtracting from the estimated total income from the contract the expenditures made to December 31, 1938, plus the estimated amount to be paid in 1939. The 1938 profit was computed in the same manner in the taxpayer’s books.”

That is his statement as to what we did, what our books show and what our returns show—percentage of completion.

Here is what he goes on to say: “For the years 1939, 1940, 1941, 1942 and 1943 the taxpayer made no attempt to keep the books or to prepare the returns upon the basis of percentage of completion.”

He goes on to point out that, because we had no consent, we had no right to depart from the percentage-of-completion basis which we used in 1938, despite this issue that he tenders and upon which they saddled us with a deficiency in tax.

Now, the examination is being directed to an attempt to establish that the 1938 bookkeeping method and return are not upon the percentage-of-completion basis. That is what they are trying to do now, and it is my view, since they have gone this far, they should take a position, so that we may know

(Testimony of Frank H. Eiseman.)

where we are going in this, whether we have got an issue about consent at all in this case, or whether there was any inconsistency.

Mr. Winter: Q. In good accounting practice, is it possible or is it desirable to keep books on an accrual method of accounting [394] and report the profit on contracts on a percentage-of-completion basis, long-term contracts? That is approved practice, isn't it? A. It is approved practice.

Q. It is approved practice to accrue income and expenses and to keep contracts on a percentage-of-completion basis. That is approved practice, isn't it?

A. Yes.

Q. And it clearly reflects income?

A. But that is separate. That is apart from an accrual method of reporting contracts on the accrual basis.

Q. I am talking about keeping the books on an accrual basis. In other words, a taxpayer can request to keep his books of account on an accrual basis and can also report the contracts upon a percentage-of-completion basis, isn't that right?

A. In the first part, having in mind to accrue income and expenses, then it is correct, yes.

Q. In the event you report the profit on contracts on a percentage-of-completion basis, whether it is a percentage based on the engineer's reports or whether it is a percentage basis based upon the per cent of the building completed, the completed building, based upon the engineer's reports, it is necessary to make allowance or make adjustments for

(Testimony of Frank H. Eiseman.)

stock piles on hand and uncompleted work at the end of the year?

A. On the uncompleted-contract basis, it is. [395]

Q. On a percentage-of-completion?

A. On a percentage-of-completion basis, yes, that is correct.

Q. It is absolutely necessary, in order that it won't distort the income from one year to another?

A. That is correct, but not on the accrual method of accounting; it is not necessary.

Q. How do you accrue contracts?

A. It is all based upon the right to receive a certain amount and the obligation to pay.

Q. Is there any consideration given to the type of contract upon which you could only be able to bill 75 per cent of the materials?

A. That would be a part—the difference between 75 and 100 per cent could be a part of that retained percentage we have been talking about.

Q. If it had been a part of the retained percentage, you will accrue that amount on your books?

A. Yes.

Q. Did they accrue anything on their books other than the billings based upon the engineer's estimates?

A. To my knowledge, the retained percentages have been added to income.

Q. Just the retained percentages, but did they accrue anything else?

A. I have not checked the other part. [396]

Q. There is no record of any inventory of amounts in stock piles?

(Testimony of Frank H. Eiseman.)

A. That is a part of the retained percentages you are talking about, the difference between 75 per cent received and 100 per cent which is shown originally on that particular billing. I would think that would be a part of that retained percentage, only the percentage is different from the percentage you have on the work done.

Q. What did they bill the Defense Plant Corporation on materials?

A. I am not familiar with that. I think you would have to ask the bookkeeper about that. I just made certain tests.

Q. As a matter of fact, they only billed 75 per cent of the materials to the Defense Plant Corporation, did they not? A. I did not check that.

Q. No. Yet, how long were you down there?

A. I was down there about four—portions of four days.

Q. Portions of four days?

A. Yes, and the balance of the work I have done in the office, in my office.

Q. You say you went down there December 31st?

A. I didn't say I went down there. I started to work on that part of the case.

Q. And this other work you have done was up until last week? A. Yes, the end of last week.

Q. You have been in court during all the testimony in this [397] case, with counsel?

A. Practically all of it, yes.

Q. Are you employed by Mr. Bischoff?

A. No, I have my own office. I am now practicing by myself.

(Testimony of Frank H. Eiseman.)

Q. Have you been doing any work for Mr. Bischoff?

A. This is the first contact I have ever had with Mr. Bischoff. In fact, I just met him when I opened my own office through his son, whom I know.

Q. Employed here on a fee basis or under subpoena? A. I am employed on a fee basis.

Q. Is that fee contingent upon the outcome of this trial?

A. No, not in any way; dependent upon the time involved in familiarizing myself with the records and the time spent in court.

Mr. Winter: I think that is all.

Redirect Examination

By Mr. Bischoff:

Q. State how much your compensation is to be.

A. I have not checked my time but—

Q. I mean, the rate of compensation that we agreed upon? A. It will be \$5 an hour.

Mr. Bischoff: That is all.

(Witness excused.)

[398]

ROBERT T. JACOB

was thereupon produced as a witness on behalf of plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Bischoff:

Q. Mr. Jacob, you are one of the attorneys in this case for plaintiff, are you not?

A. That is correct.

(Testimony of Robert T. Jacob.)

Q. Have you been attorney for the Ross B. Hammond Company for some time?

A. Since 1936.

Q. And up to and including the year 1942, what was the nature of the services you rendered for Mr. Hammond?

Mr. Winter: Objected to as incompetent, irrelevant and immaterial.

The Court: Answer.

A. I rendered various services in connection with his tax matters and with his business matters, too.

Q. Did he consult with you regarding his tax problems?

A. Yes, his accountants have with respect to the annual returns and they and he have consulted me about his business affairs.

Q. Did he confer with you at all prior to February 3, 1942, with respect to the formation of a partnership with his son?

A. Yes, he did. Either the latter part of 1940 or the first part of 1941, he consulted with me regarding a partnership with [399] Bill.

He said Bill was planning to go to Brazil to establish his own contracting business; he tried to impress upon him the fact that he was throwing away a good foundation, and that he would have to start at the bottom, which he felt was needless, and he said he had talked with him with a view to his coming in with him, and he wanted to be sure that he was tied in, so I discussed the matter with him generally, and he informed me Bill was to be married very shortly thereafter.

(Testimony of Robert T. Jacob.)

I asked him if he were aware of what the result would be if anything happened to Bill; that his wife would be the heir to his estate and so on and, after having pointed that out to him, he decided he would let the matter rest to see how Bill and his bride got along, so nothing was done then respecting the formation of the partnership.

Q. When was the matter broached again?

A. It was taken up again the early part of 1942, after Bill had returned from the time he spent at Fort Lewis.

Q. What precipitated the discussion at that time with respect to a partnership?

A. Well, he was trying to keep Bill from going into the service; he felt that because of Bill's training and his accomplishments and because of the fact that he—

Q. You don't need to go into detail, but was that the thing that brought the thing in focus again?

A. That is right, and the fact that he was entering into a number of other agreements with H. M. Mason and A. V. Petersen.

Q. What did he say to you as to his conclusion with respect to the formation of a partnership?

A. He decided he wanted the partnership formed.

Q. Did he give you any instructions with respect to preparing the agreement?

A. He did. He told me what interest Bill was to have; and what the drawing accounts were to be and instructed me to prepare the agreements.

Q. I show you Exhibits No. 2 and No. 3 and ask you if you prepared those instruments?

(Testimony of Robert T. Jacob.)

A. I did.

Q. Are those in the form they were originally, or has there been any substitution of any papers, as Mr. Winter has intimated in his examination here?

A. None whatsoever.

Mr. Winter: I object to that, as to my intimating. I asked questions. I can ask questions without counsel insulting me, I think. Of course, I consider the source.

Mr. Bischoff: After these documents were prepared, did you supervise the execution of them, or were you present, or did you just turn them for execution?

A. No, I sent them to Mr. Hammond in the mail.

Q. You retained copies for your files? [401]

A. That is right.

Q. In connection with the preparation of income tax returns for the Hammond Company, and members of it, did you undertake to make up the balance sheet and trial balance from which the income tax returns were made?

A. No, I didn't. The preparation of returns is made in two or three different ways—that is, the furnishing of advice or the actual preparation of the returns. In connection with Mr. Hammond, our office never has prepared any of the returns.

Q. Who actually accumulated the figures upon which the income of the taxpayer had to be determined, or from which it had to be determined?

A. Mr. Hammond's accountant in every case accumulated the information.

(Testimony of Robert T. Jacob.)

Q. To what extent did you have anything to do with the supervision of the income tax returns?

A. I was available for counsel and conferences as to any item under discussion, as to how it should be handled, and I checked the computations and, as a matter of fact, either I or my office checked the computations in each of the years in question, except possibly the year 1942. We have no record of having had anything to do with the 1942 returns. You will notice in all cases except the returns for 1942 where I assisted, I signed the returns.

Q. Is there any law or regulation requiring certifications if somebody else prepared the return?

A. The one who prepares the return is required to certify that he did so.

Q. Did you certify the 1942 return? I hand you this document.

A. I hold the return of Ross B. Hammond for 1942, and I did not certify to it.

Q. Will you say whether you had anything to do with the preparation of the return?

A. I did not.

Q. Did you have any consultation with anyone connected with the Hammond organization with respect to its preparation?

A. Not the final; I had nothing—I had never seen this final return until I came into the courtroom. As a matter of fact, I was not in the city at the time the return was prepared.

Q. Where were you at the time?

A. I was in Washington, D. C.

(Testimony of Robert T. Jacob.)

Q. When was the first time— Let me ask you this: Was there any understanding had at the time the partnership was formed as to whether it should be made public or not?

A. It was definitely understood that it was not to be made public.

Q. Do you know what, if anything, was done in connection with keeping of the accounts so as to reflect the partnership in the year 1942?

A. I made no—I did not give the bookkeeper any instructions at all about the accounting, and I made no examination of the [403] accounts, since I did not prepare the return for 1942.

Q. Did you have anything to do with the preparation of the amended 1942 returns for Hammond, individually, and the partnership?

A. I did, yes.

Q. I show you these documents and ask you if you prepared or assisted in the preparation of the 1942 amended returns and the 1943 returns?

A. I assisted in the preparation of the 1943 return of Ross B. Hammond, the 1943 return of Ross B. Hammond Company, the partnership return, and also—Well, this is 1944. Oh, yes. 1943; 1943 partnership return of Ross B. Hammond Company.

Q. What we have been referring to are the 1942 amended returns. Were those made in connection with or jointly with the 1943 returns?

A. Yes.

Mr. Winter: The 1942 amended return of Ross B. Hammond?

Mr. Bischoff: Yes.

(Testimony of Robert T. Jacob.)

Mr. Winter: There is no amended return of Mr. Ross B. Hammond for 1942.

Mr. Bischoff: Q. Mr. Jacob, will you explain how the amendment was accomplished and why it was done in that way?

A. As far as the return of Ross B. Hammond is concerned, personally, the 1943 return embodies the income of 1942. The two years were taken together to accomplish the forgiveness or to put [404] into effect the forgiveness provision of the Internal Revenue Act, so one return embodied the computation of the tax for both years.

Q. Was that the prescribed method of determining the application of the forgiveness tax?

A. That is right.

Q. The taxpayer had to recompute 1942 in connection with 1943? A. That is right.

Mr. Winter: The taxpayer corporation did not.

Mr. Bischoff: The taxpayer to whom the forgiveness tax applied? A. Right.

Q. In making these combined 1942 and 1943 returns, did you have occasion to examine the first 1942 return that had been filed? A. I did.

Q. What, if anything, did you discover with respect to the partnership aspect of the organization?

A. I discovered that the partnership had not been taken into account.

Q. What did you do in connection with the matter?

A. Well, we prepared an amended return for William Hammond and we prepared the 1942 part-

(Testimony of Robert T. Jacob.)

nership return to reflect the actual operation, and I also instructed the bookkeeper to reverse an entry that she had made previously whereby she had credited William A. Hammond with a percentage of profit which was erroneously [405] determined. The computation compares exactly with the compensation paid to Petersen, but we made no change in the amount because the 25 per cent of the profits which was accruable to William after the deduction of the percentage of profits paid to Petersen and Mason, came within a very few dollars of the amount which had already been credited to him, so we made no change in the accounts in that connection. It seems to me the difference in computation was between twenty and thirty dollars.

Q. When you became aware of what had happened, did you discuss the matter with Mr. Hammond? A. Immediately, I told him about it.

Q. What was done or what did he instruct you to do with respect to it?

A. He instructed me to correct the record; that is, to put the partnership into effect as of the date it was organized.

Mr. Bischoff: You may cross-examine.

Cross-Examination

By Mr. Winter:

Q. Was there any reason for Mr. Hammond to sell a 25 per cent interest to his son, other than the fact that the percentage which had already been deducted, percentage of profits, came within a few dollars? Did that have anything to do with the 75-25 deal?

(Testimony of Robert T. Jacob.)

A. No, not at all. That was the percentage agreed upon at the time the agreement was executed. [406]

Q. When did you say the agreement was executed?

A. I say it was executed—that is, it was prepared prior to February 3rd.

Q. But you don't know when it was executed?

A. I didn't say the date.

Q. You were not present? A. No.

Q. You don't know whether it was executed until the following year, 1943, do you?

A. No, I don't, but—

Q. Was it prepared in your office?

A. Yes, sir.

Q. And the power of attorney was prepared in your office?

A. I don't believe it was. I am not sure, but I don't think the power of attorney was.

Q. Did you know the power of attorney had been given until I showed it to you here in the courtroom?

A. Oh, yes, I had a copy of it and I gave a copy to Mr. Williams, but I recall very distinctly with respect to that that Mr. Hammond, at the time the agreements were sent to him, called me and said it would be necessary to have a power of attorney under the conditions and, so, it was prepared and I don't know—I don't recall whether it was in my office or not; I rather think it was.

Q. Do you know whether or not, under a Government contract, they [407] can charge the reasonable expenses of a superintendent where one of the super-

(Testimony of Robert T. Jacob.)

intendents acts—where one of the partners, I mean, acts as a superintendent, on a cost-plus contract?

Mr. Bischoff: I object, your Honor. It has no relation to anything developed on direct examination.

A. I don't know.

Mr. Bischoff: Just a minute.

The Court: He has answered he does not know.

Mr. Winter: Q. Contracts 210 and 211, you are familiar with them? There was deducted from those contracts the salary paid Mr. Bill Hammond, plus the percentage of profits as accrued on the books.

Mr. Bischoff: Objected to as improper cross-examination.

The Court: What is the point, Mr. Winter?

Mr. Winter: The point I was trying to bring out is that there were other advantages. He now claims a partnership existed. Of course, it is our position for income tax purposes that there was no advantage and that Mr. Hammond received a salary, having been raised from \$4,000 to \$7,500 for his services.

The Court: That might be proper cross-examination of the principals but not of the lawyer, it seems to me.

Mr. Winter: Q. Did you advise Mr. Hammond that it would be to his tax advantage, or to his advantage, that Bill Hammond be working on a percentage of profits rather than as a partner?

A. No, sir, I didn't. [408]

Q. Of course, you didn't tell anybody about the formation of the partnership, did you?

(Testimony of Robert T. Jacob.)

A. Certainly not.

Mr. Winter: That is all.

Redirect Examination

By Mr. Bischoff:

Q. You told the stenographer to whom you dictated, I presume?

Mr. Winter: I don't know. The Notary Public couldn't find out. She took an acknowledgment.

The Court: Step down.

(Witness excused.)

Mr. Bischoff: The plaintiff rests, Your Honor.

(Plaintiff rests.) [409]

DEFENDANT'S MOTION FOR DISMISSAL

Mr. Winter: At this time, Your Honor, we move to dismiss the complaint on the ground that the plaintiff has failed to show his gross income or the credits to which he would be entitled to; in other words, has failed to show he has overpaid his tax during the year in question.

The Court: Decision is reserved until the end of the case. [410]

DEFENDANT'S TESTIMONY

W. G. WILLIAMS

was thereupon produced as a witness on behalf of defendant and, being first duly sworn, was examined as testified as follows:

Direct Examination

By Mr. Winter:

Q. Just state your full name?

A. W. G. Williams.

Q. Where do you reside?

A. Portland, Oregon.

Q. What is your occupation, Mr. Williams?

A. United States Internal Revenue Agent.

Q. And your post of duty is what?

A. Is at Portland, Oregon; Seattle Division, stationed at Portland.

Q. Under whom do you work?

A. S. R. Stockton, Internal Revenue Agent in Charge, stationed at Seattle.

Q. How long have you been a Revenue Agent, Mr. Williams.

A. Continuously since February 18, 1922.

Q. Since 1922? A. Yes, sir.

Q. Therefore, over a period of approximately twenty-six years? A. Approximately.

Q. During that time have you or have you not had occasion to [411] investigate tax liability of many, many taxpayers? A. Yes, sir.

Q. And particularly large taxpayers, is that right? A. Quite a number, yes.

(Testimony of W. G. Williams.)

Q. Were you called upon to make an investigation as to the 1943 tax liability of Ross B. Hammond? A. I was.

Q. When was that?

A. That was some time early in 1944. I first turned my attention to the examination in the latter part of July, 1944.

Q. Your report appears to have been dated——

A. —in the latter part of August, I believe.

Q. What?

A. The latter part of August, I believe.

Q. August 29, 1944. Was that about when you completed your investigation? A. Yes.

Q. Will you state whether or not you made a record of the total full days in time that you put in upon the investigation of the plaintiff's tax liability for that period? A. I did.

Q. How long did you spend in actual days and over what period of time?

A. Twenty-three days over the period, slightly more than a month.

Q. Slightly more than what? [412]

A. Slightly more than a month.

Q. Would you just tell the Court what you did in connection with the investigation? In other words, tell the court what you did with respect to examining the records and books?

A. I examined the general ledger, the journal, some of the billings, most of the contracts, most parts of the contracts, and any vouchers that were necessary to examine in substantiation of journal entries.

(Testimony of W. G. Williams.)

Q. In your report you state: "The lack of proper accrual accounting resulted in a distortion of profits as between the years included in the period of construction." What do you mean by that, Mr. Williams?

Mr. Bischoff: Objected to, Your Honor. It speaks for itself.

The Court: He may answer. Let him interpret his report.

A. The principal——

Mr. Bischoff: Page 5, Your Honor.

A. The principal error I noted in the accrual of the accounts——

Mr. Winter: I didn't get it.

A. The principal error noted in the accrual of the accounts placed on the books and as used to compute the contractual profit on various contracts was in the omission of the use of inventories—work in process and inventories of stock piles on hand at December 31st of 1942 and 1943, for which income had not as yet been reported for that particular period. [413]

Q. On what basis were the books apparently kept?

A. The accounts were apparently entered on the accrual basis, as far as liabilities were concerned.

Q. Yes.

A. I considered that the income was not entered on a true and complete accrual basis for the reason that some of the billings were entered in

(Testimony of W. G. Williams.)

the early part of December of either one of the years and no income had been entered into the books for the period from the date of the billing to the end of the year. All the facts had happened which would establish the accrual of income, inasmuch as the billing had progressed—and on which the billings were computed—even though the amounts might not have been determined exactly until some subsequent period.

Q. Were you able to find on the books any record of the value of the work in progress for which no billings had been made at the end of the year? A. No, sir.

Q. Either the years 1941, 1942, 1943 or 1944?

A. No, sir.

Q. Were there any records of stock-piled materials on hand which had been accrued on the books and for which no billings had been made?

A. No, sir.

Q. In other words, it was impossible for you—Was it or was it not impossible for you to determine the true profit on a contract [414] on a percentage-of-completion basis? A. No, sir.

Q. Completion basis or percentage-of-completion basis of reporting on contracts?

A. No, sir.

Q. Was it or was it not possible for you to determine whether or not the profit income had been reported on an accrual basis?

A. Proper contractual income, you mean?

Q. Yes. A. It was not possible.

(Testimony of W. G. Williams.)

Q. Why do you say it was not possible?

A. Because I consider in accrual accounting—it is general accounting practice that in accrual accounting, where expenditures have been made for supplies, that only deductions be permitted for which income is reflected for that period; that the inventory of supplies on hand must modify the deduction.

Q. How was the income for 1938 reported? Was that reported on an accrual or percentage-of-completion basis of the contract, or how?

A. The income was determined in accordance with the percentage of completion of the contract, of the construction.

Q. How were the accounts kept?

A. The accounts were kept on the books on the accrual basis.

Q. The books were kept on an accrual basis?

A. The liabilities were entered on the accrual basis and the [415] income was entered on the billed basis.

Q. Were the accounts kept on the books from 1938 through 1944 on the same basis or not?

A. The accounts were placed in the books on the same basis.

Q. However, as I understand it, the only long-term contract that was in existence in 1938 and 1939 was reported on a percentage of the completed contract, on the basis of the percentage of the completed contract, is that right?

(Testimony of W. G. Williams.)

A. That is right. The percentage of completion of construction was used to determine the amount of income reported in 1938.

Q. Did that also happen in 1939 with respect to the balance, when the contract was completed?

A. That is right.

Q. Where on the books or the returns is the profit to Mr. Petersen and Mr. Mason and the profit as reported to Mr. William A. Hammond? Where is that reflected in the income tax returns?

A. For 1942?

Q. Yes.

A. That was reflected by Journal Entry 125 in the journal.

Q. Yes.

A. In other words, the profits of the three were charged to three different job accounts.

Q. You mean by that it was deducted in the cost of those contracts and thereby the profit was reduced in that proportion?

A. That is right. [416]

Q. And the only profit in that proportion reported on the return? A. That is right.

Q. In other words, did or did not the plaintiff deduct profit on his contracts for 1942 in the sum of \$86,635.88, covering the profits accrued to Mr. Petersen and Mr. Mason?

Mr. Bischoff: We renew our objection to that, Your Honor, that the Petersen and Mason transactions are not issues in this case any longer.

The Court: Admitted on the same basis as before.

(Testimony of W. G. Williams.)

A. I believe that is the figure.

Mr. Winter: Q. The sum of \$77,366.37 was also omitted but deducted as expenses in the return for 1943?

Mr. Bischoff: The same objection.

The Court: The same ruling.

A. That appears to be the figure, as I remember it.

Mr. Winter: \$77,366.37? A. Yes.

Mr. Winter: In order to save time—I am sure that those are the total amounts paid Petersen and Mason—Do you agree with me, Mr. Jacob?

Mr. Bischoff: I didn't get the figures you read off.

Mr. Winter: The books will show and, to save time, I am sure those are the figures.

Mr. Bischoff: Your amended answer sets forth the figures. [417]

Mr. Winter: Well, those are the amounts.

Q. Mr. Williams, upon the completion of your examination, did you or did you not conclude whether or not the taxpayer's books clearly reflected the income for the year 1943?

A. I did not. I determined that they did not clearly reflect the income.

Q. Upon what did you base that conclusion?

A. Principally on the basis that, regardless of whether the contract profit was reported on the accrual basis or the percentage-of-completion basis, the books did not show sufficient information to properly compute the contractual profit for any

(Testimony of W. G. Williams.)

one of the years included in the term of the contracts.

Q. What did you do in your report to rectify the situation? Before you answer that, I will strike it.

Just point out to the Court what you have stated in your report as distortion of income.

A. With respect to those contracts?

Q. Do you understand what I mean?

A. You mean that I should point out where I considered distortions to have occurred?

Q. Where were they evident from the contracts?

A. As has been previously pointed out, and as I have pointed out in my report, the Troutdale Aluminum Plant is the most serious offender in this respect.

The income received and recorded for 1941 was \$59,775.31 [418] and the profit per books recorded, \$23,544.42.

For 1942, income received and recorded was \$1,036,623.10. A net loss was recorded of \$20,786.73.

For 1943, the net income recorded was \$274,-431.59; net profit therefrom reported of \$93,936.62.

The profit was so disproportionate as to cause me to believe that such disproportion would not be caused by the difference in construction as between the years. Consequently, I looked further in the books and noticed—I noticed this distortion at the beginning of my examination. I immediately attempted to find out why such distortion existed. I soon found out there were no inventories taken into consideration.

(Testimony of W. G. Williams.)

Q. By "inventories", you mean stock piles at the end of the year?

A. Stock piles at the end of the year or work in process, or the 25 per cent for which they had not billed, and I considered that was sufficient in a contract of that size to cause considerable distortion.

Q. In any of the contracts, is there any relative percentage from one year to the other, as far as profit is concerned? I mean, do they follow a pattern or not?

The Court: Before he answer that, let him amplify the reference which he made to the 25 per cent.

A. When the taxpayer billed the owner for the amount of construction completed and for the amount of materials and supplies in stock piles, he billed for 100 per cent of the contract price [419] attributed to the construction and for 75 per cent of the contract price—75 per cent of the cost of materials in stock piles.

(Answer read.)

A. I could amplify that.

The Court: I wish you would.

A. I could amplify that by the statement that such 75 per cent and 25 per cent pertained to the contract entered into with the Defense Plant Corporation.

The Court: I don't follow you. I think you will have to give me some figures now in order for me to understand all of that. Let us take any month.

(Testimony of W. G. Williams.)

December is the month we have been talking about a lot. Let's take any month. Could you put that in figures, what you have just said?

A. Does Your Honor wish assumed figures?

The Court: Yes, round numbers.

A. We will assume that billings for the construction in progress, in accordance with the engineer's estimates——

The Court: Is this for some one month?

A. We will take December 31, 1942.

The Court: O. K.

A. Say \$200,000. That would be the billing for 100 per cent of the work performed on the contract since the last billing.

The Court: Since the preceding month, probably?

A. Yes, and the stock piles attached a cost, we will say, of [420] \$100,000.

The Court: The stock piles did what?

A. They had a cost attached to them for their purchase of \$100,000. The billing would be \$200,000 attached to the construction of the contract and \$75,000 attached to the stock piles. The owner, in making payment of this amount, would pay 90 per cent of the \$200,000.

The Court: The billing would be \$275,000 in total. Right?

A. Yes, sir. The owner, in making payment, would pay 90 per cent of the \$200,000 or \$180,000, and the \$75,000.

(Testimony of W. G. Williams.)

The Court: Now, wait a minute. 90 per cent of \$275,000 is how much? The owner would pay 90 per cent of the \$275,000?

A. 90 per cent of the \$200,000 would be \$180,000 paid on the construction.

The Court: Yes. What happens to this \$75,000?

A. That is paid to the taxpayer by the owner.

The Court: Is that included in the \$200,000?

A. No.

Mr. Bischoff: That is in addition.

A. That is in addition to the \$200,000.

The Court: The owner is to pay 90 per cent of the \$275,000?

A. 90 per cent of the \$200,000 plus the \$75,000.

The Court: The same thing. 90 per cent of \$275,000, isn't it?

Mr. Bischoff: No, the \$75,000 is paid in full.
[421]

The Court: Let him testify.

Mr. Bischoff: I beg your pardon.

The Court: I did not mean anything personal. Maybe it would be better for Mr. Williams to write it out on a piece of paper for me, what happened. We will take a few minutes recess.

(Recess.)

Mr. Winter: Q. I think I asked you whether or not you were able to take the books and set up a true percentage-of-completion method of reporting the income on these contracts.

The Court: Did you get a copy of that?

(Testimony of W. G. Williams.)

Mr. Bischoff: No.

Mr. Winter: Q. You said you were unable to do it because the books and records were not complete, that there was no record of unfinished work.

The Court: Take a copy off of that and send it back to me.

Mr. Bischoff: Very well.

Mr. Winter: Q. Since there was no inventory of stock piles or no record kept of the percentage of work which was completed but which was not billed. A. Yes.

Q. I will show you what has been marked for identification as a part of Exhibit 21. What does that appear to be, Mr. Williams?

A. Estimate of work in progress.

Q. On the Milwaukie job? On the Milwaukie Housing Project? A. That is right. [422]

Q. What period does it cover?

A. This estimate covers the period October 14, 1942, to February 1, 1943.

Q. Does it show what date it was mailed on?

A. There is a lead pencil notation "Mailed February 2."

Q. Is that what you had reference to when you said a good deal of the work or some of the work appeared to be done and the costs incurred in one year and no billing made on work at the end of the year until the succeeding year?

A. That is right.

Q. Did you spot-check through these billings to ascertain whether those things—

(Testimony of W. G. Williams.)

A. Correct. I spot-checked through some of them where there appeared to be discrepancies.

Mr. Bischoff: May we have this contract identified so we will know what we are talking about? Mr. Winter, what contract folder did you take that out of?

Mr. Winter: This is from the Milwaukie Housing Project. A. That is right.

Mr. Winter: Contract 207.

Q. Is that the contract which showed an income per the books of \$7,634.09 and only a cost of \$577, I think it is, during the year?

A. I believe it is.

Q. In other words, over \$7,100 income reported than in costs in [423] that year. What did you do with respect to any adjustment of income because of your investigation and the failure of the books to record these matters? What method of accounting did you set up to arrive at an adjustment?

A. I set up a method of accounting which was, to some extent, similar to that used in 1938. I took the percentage of the profit on the total contract to the total sales.

Mr. Winter: Just a minute. I have another copy, if the Court wants to follow the witness. He is going to testify from his report. It is much easier to see.

Q. Just explain what you did. Then I am going to ask you to go down through each contract and show what adjustments were made.

A. Milwaukie Housing Project, Contract 207. I listed first the net profit from the books and the

(Testimony of W. G. Williams.)

manner in which it was arrived at and as reported on the returns.

1941	\$ 7,725.91
1942	22,630.17
1943	7,058.97

A total net profit of\$37,415.05

Q. That is the total profit on the contract?

A. Yes, derived from total sales of \$289,200.76.

I made an adjustment in the case of this contract. Inasmuch as the total construction had been 100 per cent completed prior to the end of 1942, it was quite apparent that the [424] amount of \$7,634.09 should have been accrued as at the end of 1942.

Q. Why do you say it should have been accrued at the end of 1942?

A. I have a notation here "Accruing 1943 sales and costs at 12/31/42. Transfer of income to 1943." In other words, I arrived at amended sales as follows:

1941	\$ 36,547.78
1942	252,652.98

The total is the same as in the
other instance,\$289,200.76,
which was not changed.

Taking the percentage of the total profit to the total income, or \$37,415.05, divided by \$289,200.76, we have 12.937397 per cent of the total profit to the total sales.

(Testimony of W. G. Williams.)

Allocating total profit to the years in proportion to the yearly income, in order to eliminate the distortion, that percentage was applied to the total sales in 1941, or \$36,547.78, we arrive at an amended income for that year of \$4,728.33.

The same operation applied to 1942 resulted in \$32,686.72, and that comprises the total profit of \$37,415.05. The profit reported on the return for 1941, \$7,725.91; \$22,630.17 for 1942; and \$7,058.97 for 1943 resulted in a total profit, as before noted, giving rise to an increase of profit for 1944 of \$10,056.55, a decrease in profit for 1941 of \$2,997.58, and a [425] decreased profit in 1943 of \$7,058.97.

Q. If I understand you correctly, then, the taxpayer had 12 per cent profit, approximately 12 per cent profit on the contract?

A. That is right.

Q. In other words, then, you allocated 12 per cent profit on the amount of sales in each year?

A. In ratio to the sales for each year.

Q. The next contract is 208 and 208-A. I notice in your report you say that in the returns, the sales, costs and profits were combined and, therefore, you combined them in your report. Is that what you did?

A. "In the returns, the sales, costs and profits from Jobs 208 and 208-A were consolidated for the stated reason that the work performed for the same agency in both contracts and the labor and material costs were not properly allocated to each contract."

(Testimony of W. G. Williams.)

In other words, apparently there was a mix-up of supplies purchased for both contracts and not perhaps properly allocated to each contract and, consequently, both contracts were consolidated and handled as if they were one contract for the purpose of this report.

Q. We have been talking about Troutdale a great deal. What was the percentage of profit on that contract?

A. Approximately 10 per cent, 10.194192 per cent, or a total profit to total sales in that amount, and that was allocated to the years in accordance with the sales, in ratio to the sales, [426] in the same ratio to sales for each year.

Q. In your original report to which you are referring, did you make any adjustments for profits deducted on those contracts for the amounts accrued to Mr. Petersen and Mr. Mason or the son, William?

A. I made no change for the profits accrued to Mr. Mason or Mr. Petersen.

Q. Were you later requested by the Commissioner or anyone to make any explanation of the report in that regard?

A. I was. The Commissioner asked a recomputation of the contracts, based upon the elimination of the accruals due to Mr. Mason and Mr. Petersen.

Q. And you made a report to the Commissioner?

A. Then I recomputed the tax on that basis and forwarded my report to the Commissioner.

(Testimony of W. G. Williams.)

Q. Will you state to the Court what Exhibit 29 is?

A. As I recall, Exhibit 29 is a recomputation made for the Commissioner.

Q. Upon what basis?

A. Upon the basis of the elimination of the accruals to Mr. Mason and Mr. Petersen.

Q. And accepting your report with respect to the other adjustments?

A. That is right.

Q. The adjustments of which we are now speaking? [427]

A. That is right and by—Well, that is all.

Q. Referring to page 18 of your report, Job 209, was any change made in the profit reported on that contract and, if not, explain.

A. Job 209, Bonneville Control House. I have a note here: "The income costs and net profit from this contract were consolidated with the figures of Jobs 208 and 208-A and the consolidated figures reported as Job 208 in the 1942 return. While this contract was performed on the site of the Aluminum Plant contract, the contract was executed as a separate construction project from Job 208, and the profits therefrom are treated herein as separate and apart from those derived from Jobs 208 and 208-A."

Q. You were able to determine from the books the total income in one year, 1942, you say?

A. The income received and recorded was \$42,-858.14.

(Testimony of W. G. Williams.)

Q. And the profit reported was what?

A. The profit reported was \$6,408.60.

Q. Did you make any change?

A. I apparently made no change in that.

Q. You did, however, in your report, or did you not, eliminate from this report the accruals to W. A. Hammond?

A. I did, with the exception of the \$7,500 salary, so-called salary, which had been understood by the other members.

Q. What recommendation did you make in your report, to shorten the matter, as to whether or not the partnership did or did not exist for income purposes, for income tax purposes? [428]

A. I recommended in my report that, for income tax purposes, the partnership did not exist in fact.

Q. Exhibit 29, that computation, is based upon giving effect to the recognition of a partnership?

A. That gives effect to the recognition of a partnership.

Q. Of course, if a partnership is not recognized, that computation would have to be revised accordingly? A. Yes.

Mr. Winter: I might say to Your Honor that we did not ask that it be introduced in evidence. It was merely identified, because I wanted the computation to be before the Court so Your Honor can see what the effects would be.

Q. Mr. Williams, when did you first find out that a partnership existed or that it was claimed

(Testimony of W. G. Williams.)

that a partnership existed? I presume it was when you received the return? A. I don't recall.

Mr. Bischoff: Just a minute.

A. I don't recall whether I was assigned the partnership return or not, but I did see the amended return or, at least, I saw in the file the amended return of William A. Hammond.

Mr. Winter: Q. Yes.

A. And I found it out immediately upon commencing my examination.

Q. Was there anything in the books and records of this corporation or anything that was exhibited to you which would indicate the existence of a partnership during the years 1942 and 1943? [429]

A. Not in the records of the corporation.

Q. Did you inquire as to whether or not there was a capital account of Mr. William Hammond?

A. I did.

Q. What were you advised and by whom?

A. I was advised by Miss Novak that there was not a separate capital account for William A. Hammond.

Q. You were down there shortly prior to August 29, 1944? A. Yes, sir.

Mr. Winter: I think you may inquire.

Cross-Examination

By Mr. Bischoff:

Q. When you received instructions or were placed in charge of auditing of the 1943 return, was that with respect to the determination of the application of the forgiveness tax?

(Testimony of W. G. Williams.)

A. I don't recall, Mr. Bischoff. I was given the return to examine. I do not recall any particular reason why the examination was ordered.

Q. You had the 1943 return before you, didn't you? A. Yes, sir.

Q. And from that you saw it was, in effect, a combined return for the year 1942 and the year 1943, which involved the application and computation of the forgiveness feature of the Act?

A. That is right. [430]

Q. And you, in fact, gave effect to that in your computation, according to your determination of the income? A. Yes, sir.

Q. So you were concerned, were you not, with the application of that forgiveness feature, as it is called? A. Yes, sir.

Q. When you undertook the examination of the combined returns—Strike that, please.

As a matter of fact, all of the taxpayers who became applicable or who were affected by the Forgiveness Act, passed in 1943, had to recompute their 1942 returns in conjunction with their 1943 returns to make applicable the forgiveness feature? A. Yes, sir.

Q. Now, when you undertook this examination, of course, you were aware that the books and returns of the taxpayer had been audited at least six times prior thereto, with respect to the question of their method of accounting?

A. I don't recall how many times they had been audited.

(Testimony of W. G. Williams.)

Q. You knew that they had been re-audited a number of times? A. Yes, sir.

Q. You knew they had been re-audited twice for the year 1938, didn't you?

A. I did not.

Q. And two reports rendered?

A. I do not now recall how many times they had been audited. [431]

Q. Did you know that they had been or that they were re-audited for the year 1939 twice and two separate reports rendered?

A. I don't remember, sir. It is probably the fact.

Q. And you knew that the same thing happened as to the year 1940? A. It might have been.

Q. You knew that the return had been examined at least once for the year 1941, before you re-examined the 1941 return? A. Yes, sir.

Q. Didn't you have copies of all Revenue Agent's reports before you when you were making that examination? A. Yes, sir.

Q. You did have them, didn't you?

A. Yes, sir.

Q. As to those prior reports, including the one that was made for the year 1941, there was no challenge in any of them, was there, as to the proper method of accounting adopted by the taxpayer?

Mr. Winter: Objected to as incompetent, irrelevant and immaterial. I can't see the reason for it. The fact that they have been audited a hundred times would not make any difference. The question

(Testimony of W. G. Williams.)

is whether or not they properly reflected the income involved.

The Court: What is the point, Mr. Bischoff?

Mr. Bischoff: We claim that the approval of the method of accounting which is implied in the reports rendered, because of [432] the failure to challenge the method, either the right to adopt it or the accuracy with which it was maintained, and the granting of refunds in some years and assessing a deficiency in some instances, led us to believe that we had the right to establish a certain course of accounting by which to conduct our business and upon which to account to our associates on a profit-sharing basis, and upon which to determine our tax liability, and our whole system of accounting was influenced by that.

The Court: Mr. Bischoff, there is very little equity in tax law and certainly no estoppel, is there?

Mr. Bischoff: There is law to the effect—I can't state it to Your Honor now. There is law to the effect that the consistent use of an approved method of accounting operates as an estoppel, even as against the Government. I mean as to the system. It might not prevent examination of some particular items that were erroneously carried, one way or the other, but I am talking now about the method employed and the system employed. The whole setup of this accounting method was carried through with a certain theory, and we had a right to do it. The whole picture would have been changed,——

(Testimony of W. G. Williams.)

The Court: Your whole argument leads back to estoppel. The Government says your method of bookkeeping did not correctly and truly and properly reflect the income. It looks like a clear-cut issue to me, no matter how long you had done it or why you had done it. [433]

Mr. Bischoff: Then, Your Honor, assuming for the moment that the rule of estoppel applies as against the Government in tax matters as it does in any other relationship between parties, here is what the Government's course of conduct led to, to our disadvantage: We pursued a certain course and in pursuing that course there were years in which we paid income tax which would be more than we would pay, more than we would be obligated to pay if we had adopted some other method which they now say is correct. We go on in that form consistently, without regard to the consequences to ourselves, for or against us.

Then we come to a point when the Government, recognizing the terrific burden of taxation that everyone has been subjected to, in 1943 passed the Act granting relief to taxpayers to the extent of 75 per cent of one year's taxes between 1942 and 1943, whichever is low, and then, when they are faced with that situation and the taxpayer is about to receive the benefits of that Act, according to the system which they had approved all along, they now say "You are to be deprived of that because you should have used another method of accounting."

(Testimony of W. G. Williams.)

The Court: My present view is they can take that position, if they can establish the method of accounting adopted does not properly reflect the income.

Mr. Bischoff: If Your Honor is ruling on this question of estoppel——

The Court: I am not ruling now. I said that was my present [434] view. As you may understand, 50 per cent of our work probably deals with Government cases and I have heard it discussed more than ten years now. If there has been some development in that field, I would be very interested to hear it.

Mr. Bischoff: I presume Your Honor will want authority submitted in due time.

The Court: Oh, yes.

Mr. Bischoff: And we will attempt to support our version of this matter the best we can.

The Court: Yes.

Mr. Bischoff: Over and above that, Your Honor, there are cases in which the courts, without regard to the doctrine of estoppel, have given that fact high significance in determining the current opinion of the Commissioner with respect to the adaptability of the method is sound or not. To that extent, at least, after all, these reports, and the basis upon which they were made, are significant and relevant.

The Court: Yes, I can see that. If Mr. Williams comes along, after half a dozen other people have worked on the books, and he finds something wrong

(Testimony of W. G. Williams.)

with them that they did not find, that tends to weaken the value of it.

Mr. Bischoff: To that extent, at least, that is clearly relevant. Whether it operates as an estoppel, we will attempt to support our position by authorities.

Q. I was inquiring as to whether you were aware from those [435] reports which you say you had that the method of accounting had never been questioned in all these reports up to your first report for the tax year 1941?

A. As far as I recall, sir, I was aware of the fact, but they were confronted with the same problems that I was.

Q. I am talking now particularly about the method of accounting. Are you aware in any instance in any of these early reports where that method was questioned? A. No, sir.

Q. So, it is fair to say that whatever criticism there is of it originated with you?

Mr. Winter: If the Court please, we have not criticized the method of accounting. We are saying the method of accounting, with respect to long-term contracts, does not clearly reflect the income.

Your Honor was inquiring about whether or not there is any estoppel in there. I want to read from the statute and regulations: "The net income shall be computed upon the taxpayer's annual accounting period, in accordance with the method regularly employed in keeping the books of such taxpayer, but if no such method of accounting has

(Testimony of W. G. Williams.)

been employed or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as, in the opinion of the Commissioner, does clearly reflect the income.”

That is the statute. No matter what method of accounting [436] was employed here—I mean, method of keeping the books—it does not make any difference. The burden is upon the plaintiff to show that the method of accounting did properly reflect income and not upon the Government to sustain the method which was used.

The Court: Proceed.

Mr. Bischoff: Q. Mr. Williams, when you made the examination of these books over at the office—I presume that is where it was, at the office of Ross B. Hammond Company? A. Yes, sir.

Q. You were given whatever records or information you asked for or that you thought necessary to make a complete examination, whatever you wanted?

A. Yes, with probably one exception. I asked for any records which might reflect the capital account of William A. Hammond and I was told that there was no such record.

I have noticed that you have a little book which I had not seen before this trial in which there is a drawing account and to which \$37,000 for 1942 is credited to William A. Hammond, which would constitute that account—regarded both as his drawing account and capital account. That is the only exception.

(Testimony of W. G. Williams.)

Q. That is the only exception? A. Yes.

Q. You were satisfied they were trying, in good faith, to cooperate with you in every way? [437]

A. Yes, as far as I could tell, they were ready to cooperate. If I would ask for a record, I eventually received the record.

Q. Mr. Williams, did you ask to see the partnership agreement when you were making the examination? A. Yes, sir.

Q. Was that exhibited to you?

A. Yes, sir.

Q. Did you ask to see the Mason and Petersen agreement? A. Yes.

Q. And were they exhibited to you?

A. Yes, sir.

Q. When you made the examination as complete as you wanted to, did you find in fact any errors that you concluded were made, according to your version of the transaction, with any design to evade any taxation?

Mr. Winter: Objected to as incimpetent, irrelevant and immaterial. The plaintiff is seeking recovery here. No one has said there has been any evasion. We have just said for tax purposes this so-called secret partnership should not be recognized?

The Court: He may answer.

A. I saw no attempt to fraudulently evade taxes, no.

Mr. Bischoff: Q. Whatever conclusion you came to, I take it, then, it was to the effect that

(Testimony of W. G. Williams.)

some errors were made in the accounting system or in the way it was being carried out? [438]

A. Yes, sir.

Q. On your direct examination I understood you to say, or to summarize, that the chief defect that you found in this method of accounting which they followed was the failure to keep what might be termed as work-in-progress accounts or inventory accounts? A. Yes, sir.

Q. Am I stating it fairly?

A. That is one of the chief defects that I noted.

Q. But in setting up an inventory account, that would presuppose that they did have an inventory of which an account should be kept, isn't that right? A. Yes.

Q. If the fact be that they had no inventory during any particular accounting period, of course, there would be no necessity for maintaining an account? A. That is right.

Q. You, of course, have in mind or did have in mind, in making the examination, the distinction between a mercantile establishment where sales and purchases were the profit-producing factor, in which inventories and work in progress are necessary elements, and a contractor's accounts. Did you have that distinction in mind when you made this examination, and made your report?

A. The question of inventories and work in process being kept by a mercantile establishment did not occur to me, Mr. Bischoff, [439] because I was working with a contractor who is, in a sense, a

(Testimony of W. G. Williams.)

manufacturer, a manufacturer of building construction.

Q. That is just what I want to come to, Mr. Williams. Were you not proceeding on the theory that there was no difference in accounting principles, at any rate for tax purposes, between a contractor putting up buildings and a merchant who is engaged in buying and selling merchandise? Is that about correct?

A. No difference in what way?

Q. I am just asking you what your reaction was.

The Court: That is not what he said. He said there was no difference between a contractor and a manufacturer.

Mr. Bischoff: Q. Let me restate the question. Perhaps I was not very clear in my question.

In making the examination, did you proceed on the assumption that the same accounting principles apply to a contractor as apply to a merchant engaged in buying and selling merchandise?

A. No, sir, I made no such assumption because the mercantile dealer did not occur to my mind.

Q. Did you go on the assumption that a man contracting to build a building is selling and buying materials?

A. I went on the assumption, sir, that a man contracting to build a building is handling his accounts—should handle his accounts in the same way that a manufacturer manufacturing some other article. In other words, it is a general accounting principle— [440]

(Testimony of W. G. Williams.)

Q. When you say "manufacturer ——"

Mr. Winter: Let him finish the answer.

A. It is a general accounting principle that when a taxpayer expends money for material and supplies that deduction for the cost of those materials and supplies is made in the year in which the income is attributed.

The Court: I will tell you what I don't understand, Mr. Williams. You use the expression "work in progress." A. Yes, Your Honor.

The Court: "Inventory" and "work in progress." They are different things, to start with, aren't they?

A. The term "Inventory," Your Honor, is loosely used in that manner.

The Court: "Work in process" or "work in progress" are the same thing, partially finished?

A. Yes.

The Court: "Inventory" is something that has been worked into the job—I mean, something that has not yet been worked into the job in any respect.

A. Yes. I was merely using the loosely-constructed term "inventory" as inventory or work in progress; in other words, summarizing, all the costs of the labor going into the work in progress and all the materials that have gone into the work in progress.

The Court: I don't want to get at it that way. I want to take "inventory" the same as these piles of sand and gravel we [441] see along the highway, to be used in the future some time. That is the in-

(Testimony of W. G. Williams.)

ventory I am thinking of. Work in progress, of course, is something that I can see, for instance, right across the street here, where these men are putting up some sheetmetal work. When they quit tonight, they are going to be partway through with what they are doing. They are going to have half of it or two-thirds of it, whatever the percentage is, completed. For the purpose of the question I am going to ask you, I am talking about "work in progress" in that way. Do you understand?

A. Yes.

The Court: Now, the system that these people used, that all was taken into account, wasn't it? In the system that they used, that was all taken into account?

A. It was taken into account up to the time that they were billed.

The Court: Up to the point where the engineers——

A. —made their estimate. Yes, from the time the engineers made their estimates. If it were December 15th, until the end of the year there would be a great deal of labor and materials and supplies gone into the work in progress which was not accounted for as at the end of the year.

The Court: You draw it that fine, do you?

A. Yes, because that amounts to a considerable figure, especially if the last billing were from one to two or three months old at the end of the year.
[442]

The Court: You are thinking about the fifteen days to the end of the year?

(Testimony of W. G. Williams.)

A. Yes, sir, or one.

Mr. Bischoff: Q. Now, Mr. Williams, when the engineer certifies that a certain type of work, that is, some particular item of work, had been completed to the point where it can be paid for, he deducts 10 per cent, we will say, for retained percentage. Did you treat that 10 per cent as work in progress that is unpaid for, or did you treat the whole of the work as certified as completed work?

A. The whole as completed work, and it was so treated by the taxpayer. A certain portion of it, 90 per cent, was received and accrued as income and 10 per cent was set up as retained percentage, and accrued to profit and loss in the taxpayer's books.

Q. The retention of a percentage, 10, 15 or 20, whatever it happens to be, is no indication that that particular work was not completed. It merely means the owner saw fit to retain some money as security out of some completed items. That is correct, isn't it? A. Yes, sir.

Q. If, in fact, there was at no time any work in progress in the true sense of the word, certainly there would be no need for maintaining an account for that purpose.

Mr. Winter: Objected to, Your Honor, that it assumes a fact [443] that has not been proven here.

Mr. Bischoff: A hypothetical question.

Mr. Winter: No records are here before the Court; no records were kept of work in progress or materials on hand. There isn't a single bit of

(Testimony of W. G. Williams.)

evidence, a single scintilla of evidence, and it is undisputed that no record was kept of it. We have no way of knowing what it was from the books and records.

Mr. Bischoff: Of course, if there was no work in progress at any time, there would be no occasion for keeping entries pertaining to it.

The Court: I don't take it that Mr. Williams claims to know whether there was or not.

Mr. Bischoff: I asked him hypothetically if there was; then we want to go to the next step to determine whether there were any such items that should have been recorded. We can only take this a step at a time, Your Honor.

Q. I will ask you again: If there were no work in progress in fact, there would be no need for setting up any account for that purpose, would there?

A. No, sir.

Q. Both with respect to inventories in the true sense, and work in progress. Did you make any effort to ascertain whether, at any given time, there was in fact any inventory that should have been recorded, any traditional inventory?

Mr. Winter: We submit, Your Honor, the questions answers [444] itself. He did not make an investigation until 1944, and clearly it seems to me it is argumentative.

The Court: How can he make a report based on the failure to keep inventories and an account of work in progress unless, in fact, there were inventories and work in progress? He can't just conclude there were.

(Testimony of W. G. Williams.)

Mr. Winter: It is self-evident from the billings they were being billed on a percentage of completion. As they completed a unit, they were entitled to bill for it, they became entitled to bill for that unit. It stands to reason that exactly at midnight December 31st there must have been a considerable amount of work in progress.

Mr. Bischoff: That is an assumption. Because a building is nearly two-thirds completed does not mean that they had a lot of materials on hand for the purpose of completing it.

The Court: Let's go ahead and try to get through. The question is: Do you know whether, in fact, there were inventories or work in progress?

A. I didn't know for a fact.

The Court: I will have to ask you one more question now. You did not try to set up what you think they should have done by way of inventories and work in progress, because you had no information available to you? A. No.

The Court: You just adopted your formula here by distributing [445] profits and distributing—What did you distribute? You distributed the income in the same proportion as expenses, wasn't that it?

Mr. Winter: No, he didn't.

A. Profits distributed in the same proportion—

The Court: —as income?

A. —as sales bore to the total.

The Court: The sales? Total sales?

(Testimony of W. G. Williams.)

A. Yes.

The Court: All right. Was that the formula you applied to correct the situation? The formula you applied grew largely out of the failure to handle inventories and work in progress?

A. I might state—I don't know whether it is relevant here or not.

The Court: Anything is relevant that you want to say, Mr. Williams.

A. But I have handled some millions of dollars worth of construction contracts during this period and in not one of them have I found a contractor who did not have work in progress or stock piles on hand. In fact, some contractors spent a great deal of money in creating large stock piles because stock was difficult to get, materials were difficult to secure, and they spent a great deal of time—one contractor had a number of men out continually looking for his materials and shipping them to the site of construction as fast as they could secure them. It [446] seems inconceivable that one contractor——

The Court: That is why we had allocations, to stop the race between people for materials, but there has been testimony here—you have heard it—that in some years of their operation these people did not have any substantial amount of inventory on hand at the end of any one year.

A. Yes, sir.

Mr. Bischoff: Q. In that connection, during the war years, a contractor performing Govern-

(Testimony of W. G. Williams.)

ment contracts had a right-of-way for materials for that purpose, didn't he?

A. That could be answered better by Mr. Hammond.

Q. You have told us you have a great deal of experience with contractors. Don't you know that to be a fact?

The Court: Had priority.

Mr. Bischoff: Q. Mr. Williams, whatever system you found there of books, whatever you denominate it, it is true, is it not, that it was consistently carried on in the same way from 1939 to 1944, inclusive? I am talking about the method.

A. It depends, sir, upon what we term the method employed. In connection with contracts in the earlier years, prior to 1941, you did not have the same problems that existed after 1941. The problems were much greater in these later years. You were dealing with a much greater amount of materials than in the earlier years.

Mr. Bischoff: Q. I am afraid you didn't understand my question [447]

The Court: I am going to interrupt you now. Where did you get this formula that you applied, the percentage of profit to income?

A. In the first place, it was applied by the taxpayer in his 1938 and 1939 returns.

Mr. Bischoff: Which we deny.

The Court: All right. That is the first step.

A. And it seems to be the only method in which profits could have been distributed evenly through-

(Testimony of W. G. Williams.)

out the period. No other method suggested itself because it would have been impossible to correct any discrepancies in accounting which were not represented by figures in the books.

The Court: Let us say Mr. Hammond made \$250,000 under a contract that was spread over twenty-five months. Let us say he made \$240,000—\$250,000 under a contract spread over an even two years. Do you understand? A. Yes.

The Court: Why didn't you just split it \$125,000 one year and \$125,000 in the other and make it come out even?

A. Because, sir, it depends entirely—in some years there were a million dollars receipts; in other years there were only, say forty-two thousand. Consequently, the income was allocated in accordance with the figures——

The Court: You wanted to find the proportion to income? [448]

A. Yes. In other words, distribute the expense more evenly in proportion to the income.

Mr. Bischoff: Q. Mr. Williams, what I was trying to find out, not in very great detail—I am talking about the method of accounting, these accounts that were set up, including the absence of an inventory or work-in-progress account. Wasn't that general system uniform or consistent from 1939 to 1944?

A. Yes, sir. The accounts were on the accrual basis, the income, and the liabilities were accrued on the books as at the end of the year.

(Testimony of W. G. Williams.)

Q. Throughout your testimony, in discussing these computations that you made, you talked of sales. Did you treat, for the purpose of your analysis, the performance of these contracts as sales?

A. It is immaterial what you term them.

Q. I just want to know whether you did treat them as sales?

A. In my report I think you will find that it is not treated as sales.

Q. In your testimony——

A. Treated as income.

Q. In your testimony you spoke of them as sales. Do you want to change your testimony now?

A. Well, if it suits the situation best. It is immaterial to me what you term it. It is income received from the contracts.

Q. It is not necessary to please me. I am trying to get the [449] facts. In testifying about these things, you referred to them as sales. I want to know if that is the sense in which you construe this operation?

A. No, sir, it is not strictly a sale. It is contractual income.

Q. Did you put them in the same category as a manufacturer of merchandise?

A. As far as the nature of his operation is concerned, he is manufacturing a building, manufacturing a road, manufacturing other things; he is constructing them.

Q. Did you apply to him the same principles of accounting as would be applied to a manufacturer manufacturing merchandise?

(Testimony of W. G. Williams.)

A. To the extent in such cases it is necessary to set up prepaid expenses, modifying deductions.

Q. In other words, you applied to him the formula that is provided for in Section 42.4(a) Regulation 111, didn't you?

I will read it to you so you will have it in mind: "Gross income derived from such contracts may be reported upon the basis of percentage of completion. In such cases there should accompany the return certificates of architects or engineers showing the percentage of completion during the taxable year of the entire work to be performed under the contract. There should be deducted from such gross income all expenditures made during the taxable year on account of the contract, account being taken of the material and supplies on hand at the beginning [450] of the taxable period for use in connection with the work under the contract but not yet so applied." A. Yes.

Q. Is that the formula you applied to the taxpayer in this case? A. Yes.

Q. In other words, you applied a formula which the regulations limit to one keeping his accounts and reporting on a percentage-of-completion basis, didn't you?

A. No. The regulation doesn't limit it to that particular form of accounting.

Q. Is there anything in the regulation——

Mr. Winter: Let him finish.

A. —that states it is so limited?

Mr. Bischoff: Q. Will you point out anything in this section, Section 42.4(a) and 42.4(b) which

(Testimony of W. G. Williams.)

authorizes the application of this formula that I just read to a contractor on the accrual basis?

A. No, sir, there is nothing in these sections which have any mention of a contract reported on the accrual basis.

Q. That is what I want to get at.

A. There is nothing in there mentioning that.

Q. But, nevertheless, you applied to this taxpayer here the formula as outlined in this Section 42.4(a), didn't you? A. Yes.

Q. One other thing I want to ask you about.

The Court: How did he apply that formula?

Mr. Bischoff: He applied it by reason of the fact that he insisted here that we should have had inventories and work-in-progress accounts.

The Court: The formula he applied was the per cent of total profits to total income, isn't it? That is the formula he applied, isn't it?

Mr. Bischoff: But he did that by rejecting our method of accounting because, as he insists, we did not maintain two accounts——

The Court: All right, but we are not trying his reasons. We are trying what he did.

Mr. Bischoff: But he says our system should be thrown out.

The Court: We are not trying the reasons why he did that. We are trying what he did. What he did was to apply the percentage of total profits to total income.

Mr. Bischoff: The point I am making now is that we adopted a certain system. He says we had no right to adopt it.

(Testimony of W. G. Williams.)

The Court: That it did not reflect the income.

Mr. Bischoff: And it did not reflect the income because we did not use this formula that he says is applicable and, therefore, our system is thrown out the window and he creates a new one.

The Court: His reasons could be bad, like any other situation, but the result, nevertheless, would be the same. [452]

Mr. Bischoff: Under the Revenue Act we had the election to select any method of accounting that we desired, subject only to the limitation that the one we select clearly reflects the income. The Commissioner cannot impose upon us a system that he wants to select for us. Now he undertakes to throw out our system and substitute another, whatever it may be, and it must be for a valid, legal reason, so his reasons are important.

Q. Mr. Williams, in analyzing our accounting system, you determined and rejected it as the correct method, among other things, because it could not clearly reflect the income in a given year. That is correct, isn't it? A. Yes.

Q. If it be the law that the term as used several places in the statute "clearly reflect the income" relates to the period of times or years during which a particular contract is being performed, then your criticism of our system would not apply, would it?

Mr. Winter: We will object to that as argumentative, Your Honor. It is certainly assuming something that has not been established.

The Court: That is the whole basis of the argument. Answer, if you can, Mr. Williams.

(Testimony of W. G. Williams.)

A. If I saw a case in which income had been bandied around ten years, and without any thought as to how much income had to be reported in any one year, I would say that those returns were [453] prepared on an erroneous basis, that each year stands on its own feet, and that the income is to be considered consistent only by reason of allocating it to given periods, and not over a period of years.

It might happen you would have a period of ten years in a contract and, according to your theory, for the first five, six, seven or eight years of that contract, during high tax years, there would be but very little income and then in the tenth year, when the income tax would drop down, you would then be permitted to report all of your income that way. Or, we could perhaps substitute five years for ten. It is not logical.

The Court: Suppose the income tax had gone up each year?

A. That is why I substituted five years for ten. If it were done in the fifth year, in the middle of the period, the taxpayer could then report in that one year all the income, in that one year when the tax was down, and then, according to his own fancy, distribute it. It is not logical, Mr. Bischoff.

Mr. Bischoff: Q. Mr. Williams, in making these audits or examinations—I don't know what you call them, technically—as an agent of the Treasury Department or Internal Revenue Bureau, you do not examine these on a purely scientific accounting basis, for the purpose of applying

(Testimony of W. G. Williams.)

purely scientific accounting methods. You applied it to see whether it was in accordance with the requirements of the Internal Revenue Act?

A. Yes, sir. [454]

Q. In other words, the law influenced your appraisal of the situation? A. Yes.

The Court: Is this formula applied a true percentage-of-completion formula?

Mr. Bischoff: No, your Honor, it is on a completed-contract basis. I can demonstrate it to your Honor right now.

Mr. Winter: No, it is not on a completed-contract basis. The percentage-of-completion basis would be if they kept the accounts in the way prescribed. The percentage-of-completion basis requires the taxpayer, as I read to your Honor, to do certain things. "There should be deducted from such gross income all expenditures made during the taxable year on account of the contract, account being taken of the materials and supplies on hand at the beginning of the taxable year for use in connection with the work under the contract but not yet so applied."

If they had a million dollars in material on hand that is going to be applied the next year, they cannot accrue that million dollars.

The Court: Do any of the contractors use this method you applied in making report of income tax?

A. Yes, they have done so, your Honor.

The Court: Of their own device?

A. Yes.

(Testimony of W. G. Williams.)

The Court: Percentage of profit to income?

A. They take the estimated portion of the total contract and the estimated profit in the total contract and apply to that estimated total profit the percentage of completion of the contract and get the amount which is reportable in that year.

The Court: You just dragged another element in there. You just answered me, percentage of completion; that is percentage of profit to income each year?

A. The income as reported in each year is based upon the percentage of the completion of the contract.

The Court: Then this formula, you say, is a percentage-of-completion formula?

A. I could raise the same question that has been raised before. I could say this, that the profit of a particular contract is reportable in the year in accordance with the percentage of completion of construction, which would place it in a little different category than naming a percentage-of-completion theory as defined in the regulations.

The Court: Percentage of completion and percentage of income are not the same thing?

A. No, sir, not necessarily. They arise the same way.

The Court: The income is what the engineer will allow you to bill for? A. Yes, sir.

The Court: Isn't it? A. Yes. [456]

The Court: You are saying that more income should have been shown in the books perhaps than the engineer would allow them to bill?

(Testimony of W. G. Williams.)

A. No, sir. I am using exactly the same income that the engineer has allowed to be billed.

The Court: You say that these people should have shown more income in certain years because they had inventories and work in progress, as you call it.

A. Net profit, your Honor.

The Court: What?

A. More net profit. I have not changed the income, your Honor, that they have reported in each year.

The Court: You say they should have shown \$100,000, at the end of a given year, in inventory—we will use round figures—on a certain job. They have either bought and paid for it or been billed for it and have to pay for it.

A. Yes.

The Court: And you say, further, that they have certain work in progress. Didn't you say that?

A. Yes, if it is work in progress. I maintain that deductions must be allowable in the years for which the income is reported.

The Court: We will say these people did get \$100,000 in sand and gravel; they don't buy their concrete, we will assume, from Readymix. They have got \$100,000 in sand and gravel out here in a pile and they pay for it and that shows as expense for [457] that year.

A. That is right.

The Court: That cuts the tax down.

A. Yes.

The Court: Because they have got \$100,000 invested there. Now, you say that they should have put that \$100,000 on the other side, too.

(Testimony of W. G. Williams.)

A. Yes, sir, I say that \$100,000, if it has not been used and if it has not been billed for, then that part of the \$100,000 worth of inventory modifies the deduction by that amount.

The Court: Would you show it as income?

A. I would show it as a reduction of expense.

The Court: Comes to the same thing.

A. Yes.

The Court: You call it modified, though.

A. Reduced, in other words.

The Court: Reduced? That is not a percentage-of-completion job?

A. No, sir, but I have applied the profit in accordance with the income reported in each year, and the income reported in each year has been established by means of taking the inventory on the job completed to that job.

The Court: I do not say you are not right in what you have done. That is what I have got to decide at the end of the case. But what I think you have done is: You found a very lop-sided [458] situation and you took a formula of your own to level it off. It does not seem to me, from what I have heard, that you took a percentage-of-completion formula to level it off.

A. No, sir.

The Court: You didn't, did you?

A. No, sir.

Q. (Mr. Bischoff): Mr. Williams, taking your analysis of these figures that you set up—the first contract, I assume, is illustrative of the rest of them. Is that a fair statement?

(Testimony of W. G. Williams.)

A. I was rattling my papers. I am sorry. I didn't hear.

Q. The formula you employed in Contract 207, the first one on this list—— A. Yes.

Q. ——is substantially the same as you applied to the others? A. It is, yes.

Q. Very well. In the first line we have "Income Per Books" for the three years, 1941, 1942 and 1943. These are our figures as to income that we reported, is that correct? A. That is correct.

Q. You have them in the amounts we reported in the various years and you also have a total for the three years, do you not? A. Yes.

Q. The next thing you noted here were the costs as we reported them, and you broke them down into labor and material, but the total is given for each year as they appear on our books and as [459] we reported them. That is correct?

A. Yes.

Q. Then we have a balanced account for the total of the three years? A. Yes.

Q. Now, then, you show also what the net profits were according to the books, the profits by year for those three years? A. Yes.

Q. And then you show the total of the profit for the three years? A. Yes, sir.

Q. For the purpose of your computation you adopted the figures that appeared on our books to arrive at the amount of income for each year, didn't you? A. Yes, sir.

Q. You adopted our figures of the profits as reported in each of those years on our books?

(Testimony of W. G. Williams.)

A. Yes, sir.

Q. Then you took the profit we reported, as we reported it, and you divided it into the income, as we reported it, and arrived at the percentage of profit which you ultimately used in your computation, didn't you? A. Yes.

Q. By that process you concluded that the profit in those years was 12.93 and some other figures?

A. Yes, sir.

Q. Then you took that ratio of profit and applied it to each year's income as we reported it, didn't you? A. Yes.

Q. That is the ultimate figure you arrived at here? A. Yes.

Q. For the purpose of computing your income?

A. Yes, with that small exception of \$7,000 plus.

Q. So, when you took the gross income as we reported it and arrived at the total amount in order to get the percentage, you applied the completed-contract method, didn't you? A. No.

Q. For that purpose? A. No.

Q. Didn't you take the total as it was ascertained at the completion of all those contracts in these three years and use that for the purpose of dividing by the total of all costs for those three years? Didn't you? A. That is right.

Q. Well, isn't that information that is ascertainable only upon completion of all work?

A. That is right.

Q. So, to that extent, at least,—

A. That is not—

(Testimony of W. G. Williams.)

Mr. Winter: Let him finish his answer. [461]

A. That is not a completed-contract basis. The completed-contract basis is where you report all the profits in one year, which I didn't do.

Q. (By Mr. Bischoff): You took the information available at the end of the contract in ascertaining how much profit there was, didn't you?

A. Yes.

Q. You took that for two purposes: To arrive at the ratio or percentage which would apply to that year and you took it for the purpose of determining the amount of income which would be applied in that year, by multiplying the income, as we reported it, by your ratio which you ascertained? A. Yes.

Q. Wasn't that combination the application of a hybrid principle, adopting a completed method for the purpose of arriving at the total cost, for the purpose of arriving at the total income and for the purpose of arriving at a total ratio of profit? Wasn't that, to that extent at least, a completed-contract basis?

A. Its allocation of the completed figures to the various years contained in the contract, yes.

Q. Of course, without waiting for the full three years to expire you could not have arrived at that formula? A. No, sir, not accurately.

Q. If you had done that, you would then take our income as we reported it and allow us to deduct only that fraction of it which [462] you compute by your other ratio? A. Yes, sir.

(Testimony of W. G. Williams.)

Q. And to that extent you were attempting to apply, in part at least, the percentage-of-completion basis, or percentage-of-income basis, which would be the more accurate?

A. It was determined that way, yes, sir.

Q. Let me read to you from a section of the Internal Revenue Act which deals with the completed contract basis, Section 42.4(b).

Mr. Winter: I think education is very enlightening but I object to reading from a statute to a witness. He is not a lawyer. That is a matter of law.

Mr. Bischoff: You used this in examining him.

Q. "Gross income may be reported for the taxable year in which the contract is finally completed and accepted if the taxpayer elects as a consistent practice so to treat such income, provided such method clearly reflects the net income. If this method is adopted, there should be deducted from gross income all expenditures during the life of the contract which are properly allocated thereto, taking into consideration any material and supplies charged to the work under the contract but remaining on hand at the time of completion."

Of course, you had this regulation in mind in making your examination, didn't you?

A. I know about that regulation, yes, but it did not apply to this case. [463]

Q. Therefore, you couldn't apply the completed-contract method in this case, could you?

A. No, sir, I didn't.

(Testimony of W. G. Williams.)

Q. For the obvious reason that you would have to eliminate, in all intervening years, all items of income and all items of expense pertaining to the contract, reported for the years 1941, 1942 and 1943; you would have to forget about the expenses of the contract until you got to the completion, is that correct? A. That is correct.

Q. You would have to defer all items?

A. Yes.

Q. We did not attempt to do that here, did we?

A. No, sir.

Q. With all this in mind, will you please tell the Court which of the four methods of accounting which the regulations make optional or authorized, was used; that is to say, whether it was cash or accrual, percentage-of-completion or completed-contract basis? Which of these do you now claim was used by the taxpayer in maintaining his books?

A. I didn't use, strictly, either one of them.

Q. Could you——

Mr. Winter: Just let him answer.

Mr. Bischoff: All right.

A. I used the one which was described in Section 41 of the Act. [464]

Q. (Mr. Bischoff): I did not ask you what method you used. I asked you what method do you now claim the taxpayer used in maintaining his books and making his reports?

A. May I have a copy of my report, Mr. Winter.

Mr. Winter: Yes.

(Testimony of W. G. Williams.)

Mr. Bischoff: Can't you answer my question from your present knowledge of the case?

A. I will answer you what is in the record, sir. I stated "It would be extremely difficult at this time to place the taxpayer's accounts upon a true accrual basis or to determine the per cent of completion of the total of any contract at the close of any of the years under examination."

In other words, the taxpayer, I do not consider, used either a true accrual method, nor did he use a percentage-of-completion basis. The taxpayer, therefore, did not use strictly either one of the authorized bases.

Q. All right. Will you tell me now which of these four methods you used in making these computations?

Mr. Winter: Object to that question. He said he didn't use any.

Mr. Bischoff: I didn't ask you. I asked the witness.

Mr. Winter: He said he didn't use any of them.

The Court: Answer.

A. I used, strictly, neither one.

Q. (Mr. Bischoff): In other words, you used a hybrid method, [465] then, didn't you?

A. A hybrid method, sir, means a combination of any one of the two or the four. I used the method which is described in Section 41 which states that the Commissioner can set up a method which, in his opinion, best reports the income.

Q. Well, is it correct to say, then, that you ignored all the four methods which I have enumer-

(Testimony of W. G. Williams.)

ated and adopted a method of your own? Is that what you now want to say?

A. It might be said that way, yes, sir.

Q. Mr. Winter read to the Court an alleged contractual provision with regard to the method of payment in which there was a 10-per-cent retained-percentage provision and a 25-per-cent deduction for materials on hand. I want to ask you: From what contract was that taken? I want to identify the contract from which that provision was quoted?

A. It was taken from one of the contract blanks of the Defense Plant Corporation. That is simply a sample copy.

Mr. Bischoff: You had a sample copy of a contract that you thought was uniformly used and that is what you read from?

Mr. Winter: It is a printed form, a copy of Defense Plant Corporation form of contract. It is Form No. DPC58.

Q. (Mr. Bischoff): You did not read that from any contract that was entered into with the plaintiff in this case, did you? A. No.

Q. Do you know whether the plaintiff had any contract with any [466] agency or anybody, any transaction involved here, in which that method of payment was provided for in the contract?

A. I can only speak from recollection. It has been three and a half years since I made this examination and since I examined the contracts. It is my recollection that he entered into several of those contracts which provided that the stock piles shall be paid—I believe one of them was 95 per cent, 90 per cent, and others were of varying ratio.

(Testimony of W. G. Williams.)

Q. You made work sheets, didn't you, when you were making this examination? A. Yes, sir.

Q. Didn't you make notations of those instances in which there were 25-per-cent material deductions to be made?

A. I didn't go through and make details of all the contracts, no, sir.

Q. Are you prepared to say now that there is any contract in which there is a 25-per-cent provision such as was read from?

A. I am prepared to say it is my recollection there were.

Q. Do you know which ones they were?

Mr. Winter: The contracts are the best evidence.

Mr. Bischoff: You have represented to the Court here that all of the contracts were upon that basis.

Mr. Winter: There are enough.

Mr. Bischoff: I want to know where you got that. We deny that, your Honor. [467]

Mr. Winter: There are enough.

Mr. Bischoff: I am going, your Honor, to submit to your Honor a sample of every contract that is in evidence here, as to what the payment provisions are. We want to know why they refuse to tell the Court——

Mr. Winter: Have you got any more questions of the witness?

Mr. Bischoff: Yes, I have got lots of questions to ask him.

The Court: Does that have something to do with Mr. Williams' opening statement when I asked him to make me a memorandum?

(Testimony of W. G. Williams.)

Mr. Bischoff: Yes, your Honor, in that very connection. Of course, if that situation does not exist, the hypothesis we have been talking about is of no interest.

The Court: I was not clear at all how Mr. Williams applied that to the case.

Mr. Bischoff: I intend to question him about the application of that method here, your Honor.

The Court: You do not need to talk about it if the contracts do not have any such a provision. The sheet which he prepared and gave me showed payment in full for materials; showed 10 per cent retained for work in construction and showed payment in full—I made a misstatement. 75 per cent.

Mr. Bischoff: Yes.

The Court: What did he claim for that? What do you understand he claims?

Mr. Bischoff: I don't know yet what he claims for that, your [468] Honor. I am going to ask him a question to find out what significance that has as far as the accrual of income is concerned. That is what I intend to ask.

The Court: You don't need to, if you think they haven't any such a contract.

Mr. Bischoff: I want to make that statement to your Honor, however, for the present, qualifiedly. I want to be sure. I want to verify these contracts to be sure about that. We attempted to do that during the recess and we were unable to complete it. I am going to ask permission of the Court to take out of the courtroom these contracts for the purpose of making that examination.

(Testimony of W. G. Williams.)

The Court: Ask Mr. Williams about this little sheet he made up, a copy of which you have. I will give him this one. Ask him what he claims for that. I didn't get it.

Q. (Mr. Bischoff): Mr. Williams, under this hypothetical situation embodied in these figures that you gave to the Court, in which we assume a billing of \$200,000 and materials of \$100,000, we received actually 90 per cent of the \$200,000 which represents work completed, and 75 per cent of \$75,000 of the materials on hand. Is it your contention——

The Court: Ask him what his contention is.

Q. (Mr. Bischoff): What is the significance of that accounting method?

A. It is my recollection that 10 per cent retained in work under [469] construction was charged on the books and credited to profit and loss at the end of the year and \$200,000 was properly accrued on the books.

Q. To that extent, it was correctly carried on the books? A. Yes.

Q. With respect to the materials mentioned in the hypothetical question, of which there was \$100,000 on hand and only 75 per cent was allowable——

A. My contention is, sir, that \$75,000 of the \$100,000 in stock piles is covered by income reported under that particular billing but that 25 per cent, which was not covered, has been left dangling in the air. That is my recollection as to how the matter happened.

Q. Assuming that this \$100,000 worth of materials was on hand and they billed \$100,000 but

(Testimony of W. G. Williams.)

they paid \$75,000: What, according to your examination of the books, did the taxpayer do in a situation of that kind? Did the taxpayer accrue the 25 per cent additional, or didn't he?

A. My recollection is that they did not.

Q. You speak about recollection. Have you any papers or memoranda that will enable you to make a correct statement, that is, a definite statement?

A. I doubt if I have anything bearing on the 25 per cent, no sir. When I saw that the accruals were not correct, there was little use of my going further in making a detailed audit to secure such [470] details. It was up to me at that time to set up the accounts in a manner in which I thought they would report most consistently the income.

Q. Wouldn't it be necessary to ascertain whether such items of the 25-per cent retained were or were not entered on the books as accruals, in order to determine what was actually done?

A. I intended to make no adjustment for that, after having determined there were no inventories of stock piles taken between the billing and the end of the year. Consequently, there was no point in going further.

Q. Probably you did not understand my question. Would it not be necessary to ascertain, so you could tell the Court, whether such items of the 25-per cent retained were or were not entered upon the books as accruals in order to determine what was actually done?

The Court: In fairness to Mr. Williams, Mr. Williams was not working out a case for the Court

(Testimony of W. G. Williams.)

in which he was interested in any way. I don't think you need to question him any further. He said that is merely his recollection. He is illustrating that inventory item and he didn't carry it out any further. You have offered evidence here that the inventory item was of little importance in this man's operation.

Mr. Bischoff: Among the items there were three or four—three or four or a few anyhow—that you referred to I think by way of illustration and, among them, was this Milwaukie job. [471]

You said there was no record of inventories in connection with that. I call your attention, Mr. Williams, to the estimate on this very job by means of which this payment was made which is being criticized here. I call your attention to line 16,—

The Court: Bring it up to him.

Mr. Bischoff: —reading “Value of materials suitably stored at conclusion of this period, none.” There is a blank space there. Of course, there could not be any inventory of that kind maintained on the job, when there wasn't any.

The Court: Is that the engineer's estimate?

Mr. Bischoff: Yes.

Mr. Winter: What is the date of that estimate?

A. The date of that estimate was October 28, 1941, and the net amount due on work performed was only \$7,500. The net amount of work performed to date was \$289,000. Wait a minute. Is that in dollars? Yes. \$289,066.67, less amount of previous estimate, \$281,566.67.

(Testimony of W. G. Williams.)

Q. (Mr. Bischoff): The net amount of work performed to date, \$7,500, being to October 28, and on that estimate sheet it shows the work to have been 100 per cent completed.

Mr. Winter: Does that answer your question?

Mr. Bischoff: Well, it does not go to the question of inventory. What inventory should they have reported in that case, when there wasn't any? [472]

Mr. Winter: If the building were fully completed, there wouldn't be any.

A. If you will notice, there was no labor in that job. There was only a small amount of materials which were purchased. It seems to me that \$7,500, whatever it was, payment was held up. The job had been completed but apparently there was some little service to be performed and that payment was merely held up pending performance of that small service. That small service entailed only the purchase of some \$580 worth of material.

Q. (Mr. Bischoff): You regard that as a trifling item in relation to that total, don't you?

A. Yes.

Q. But if the contracting officer or the engineer refused to pay \$7,600 because he claimed that we had to do a certain amount of work, that contract is not complete?

A. I think you have misstated it. I think if you will look into this case you will probably find that they have not refused to pay it; they merely held up any acceptance until some small service had been completed in connection with the playgrounds.

(Testimony of W. G. Williams.)

Q. If they refused to approve the estimate, isn't that equivalent to a refusal to pay?

A. I am not saying that they have refused to approve the estimate.

Q. You don't know, but if that be the fact, would that indicate a completion of the work in that year?

A. Not necessarily. The thing is too hypothetical to assume [473] that fact. Unless you have all the facts, it is impossible to state.

Q. Mr. Williams, the sum and substance of this matter we have discussed, the last item, is that the question revolves itself around whether or not the percentage of money retained was accrued on the books? Is that the issue that you are trying to make?

A. Depends on the percentage you are talking about. 90 per cent, with 10 per cent retained, I will assume it belongs on the books properly.

Q. And accrued? A. Yes, sir.

Q. And taken into income? A. Yes.

Q. Now, the question that we still have undecided is whether the 25 per cent, if there are any instances of that amount retained out of materials on hand, was or was not accrued. Is that correct?

A. That is the question still undecided.

Q. What, in your judgment, should have been done? Should it have been accrued the same as the 10 per cent to make a proper accounting?

A. Yes, sir.

Q. It should have been accrued?

(Testimony of W. G. Williams.)

A. Not exactly in the same manner. The remaining 25 per cent [474] should have been applied as prepaid expenses.

Q. It would come to the same thing, whether you took it off one end or the other? A. Oh, yes.

Q. It comes to the same end? A. Yes.

Q. If it should develop any percentage, whether it be 5 per cent or 25 per cent, was retained from any unused materials or stockpiled material for which billing was made, and those items were accrued on the books, then there would be no criticism about this method of bookkeeping?

A. Oh, no. You are mistaken. There would be no criticism upon that particular point.

Q. That is what I am talking about. I didn't mean to enlarge it. A. Yes.

Q. I mean on that particular point.

Mr. Bischoff: Your Honor, may we recess, because I want to get these contracts so I can submit to your Honor the true situation here.

Mr. Winter: Can't we finish with this witness tonight?

Mr. Bischoff: I may want to ask some further questions.

Mr. Winter: What about the contracts?

Mr. Bischoff: I would like to ask your Honor for an adjournment at this time, with permission to take the contracts from the [475] courtroom.

The Court: All right.

Mr. Winter: How are we going to examine the contracts if you are going to take them from the courtroom?

(Testimony of W. G. Williams.)

(Thereupon, at 5:05 o'clock p.m., an adjournment was taken until 10:00 o'clock a.m., Friday, January 16, 1948.) [476]

Court reconvened at 10:00 o'clock a.m., Friday, January 16, 1948.

W. G. WILLIAMS,

having been previously duly sworn, resumed the stand and was further examined and testified as follows:

Cross-Examination—(Continued)

Mr. Bischoff: May it please the Court, after last night's adjournment, with permission of the Court, I took the contracts out with me and I have prepared a summary of the contract provisions with respect to the method of payment, with appropriate references to the page and paragraph numbers of the contracts in which they appear. I have had it typewritten and I would like to submit it to the Court as a matter of convenience in locating readily the particular provisions.

Mr. Winter: Does it cover all the contracts that were admitted in evidence?

Mr. Bischoff: It covers all the contracts referred to in the Revenue Agent's report.

Mr. Winter: Does the exhibit cover other contracts not in the Revenue Agent's report?

Mr. Bischoff: There is a group of contracts which I discover, in going over them, which are in no way connected with any of the matters in controversy here; they just happen to be in the bundle.

(Testimony of W. G. Williams.)

I made no attempt to summarize those contracts, and I am going to ask permission to withdraw those from the file later, but I did not attempt to summarize those.

I summarized every contract that appears in the Revenue Agent's report.

I may say in explanation as to one contract, Contract No. 207, the contract itself is in the file but the specifications are not in the file and we have not been able to locate them. They have been missing for a long time, before this case arose, even, and it is in the specifications that the provision regarding payment is contained, but there will be evidence introduced here that the provision in that specification, being a housing project, was the same as in 208 and 209. It was also a housing project and the provisions were identical, and I have so treated that in this summary.

Mr. Winter: What was that contract?

Mr. Bischoff: 207.

Mr. Winter: Mr. Williams can answer that question.

A. No, sir, that is the Milwaukie Housing.

Mr. Winter: Milwaukie Housing?

A. Yes.

Mr. Bischoff: I will say to your Honor now, in connection with the matter that precipitated this question yesterday was the absence or presence of this 10-per cent retained-percentage provision and 25-per cent retention for materials not incorporated. There are two such contracts in the group. The rest of the contracts, [478] with some slight varia-

(Testimony of W. G. Williams.)

tions, which I think are not important here, are 10-per cent retained-percentage contracts, using the express language materials incorporated and materials at the site. That is the language used in preparing the estimates, materials delivered on the site and preparatory work done may be taken into consideration. That is one type of contract. In another type of contract they merely use the words that the billing shall be for 90 per cent of the materials incorporated and stored. Those are the two types of 10-per cent retained-percentage contracts.

Mr. Winter: Do you have another copy of that that I might use? I want the witness to have a copy of it.

Mr. Bischoff: The evidence will develop here that in both of those contracts—I refer to 213 and 216—the entire amount was accrued on the books; that is, 100 per cent billing was accrued on the books and treated as income in the years; that is, 10 per cent of the value of materials stored on the ground was included in the buildings.

Mr. Winter: That is, the material on hand at the time of the engineer's estimate, not at the time of the billing. That is your contention?

Mr. Bischoff: I don't know as I quite understand. The billing was made in accordance with the terms of the contract and they made the distinction between materials incorporated in the work and materials stored on the site. [479]

Mr. Winter: At the time——

Mr. Bischoff: At the time of the billing.

(Testimony of W. G. Williams.)

Mr. Winter: At the time the engineer had to estimate it. I just want to know whether you are making any distinction, or whether you are contending that they made no inventory after the engineer's estimate at the end of the year.

Mr. Bischoff: No, I am not talking about inventory. I am talking——

Mr. Winter: Talking about materials?

Mr. Bischoff: Whether the billing was done; and when they billed for a given month they included not only the materials incorporated but they included the materials that were on the site and they accrued 100 per cent on the books although they were entitled to receive only 75 per cent at that time for the materials which had not yet been incorporated. I don't know how else I can state it.

Mr. Winter: Was that at the time the billing was made that it was computed or at the time the engineer's estimate was made?

Mr. Bischoff: I can't answer you on that. The witness on the stand will tell you what was done. I didn't do the bookkeeping, so I can't tell you.

Q. Mr. Williams, have you before you a copy of your Revenue Agent's report? A. Yes.

Q. Will you please turn to Job No. 213. That is the job started [480] in 1943. That job started in 1943, didn't it? A. Yes.

Q. There is nothing for 1942 reflected in that item? A. No, sir.

Q. There was nothing thrown into 1942 from that job, was there? A. No, sir.

(Testimony of W. G. Williams.)

Q. You made the examination in August, 1944; am I correct about that? A. Yes, sir.

Q. You reported for the years 1943 and 1944 for that job, didn't you?

A. Yes, I merely showed in 1944 what was allocable for that year up to that time.

Q. As a matter of fact, that contract was not completed in 1944, was it?

A. I don't recall that, sir.

Q. Will you take the ledger which you examined at that time. That is the ledger account you examined except for the fact that there were subsequent entries made? A. Yes, sir.

Q. That does show there were charges in that account made subsequent to the time of your examination, doesn't it? A. Yes.

Q. In very substantial amounts? [481]

A. Yes, sir.

Q. Will you please read off the charges that were made to that account after your examination?

A. August 31st, there was a reduction of the debits of \$412.92; October 31st, there was a charge to the account of \$66.69; November 17th, there was a charge of \$419.73; December 30th, there was a charge of \$10,533.37, and the other debit is debiting the profit.

Q. Can you tell from that account now, as it is set up, what the net profit on the job was?

A. Yes, \$17,000.29.

Q. There was another profit in the earlier year, was there?

A. At the end of the period?

(Testimony of W. G. Williams.)

Q. \$10,000-odd at the end of 1943?

A. \$10,159.76.

Q. In other words, the total profit shown on that account at the conclusion of the job was \$27,000 and some odd, wasn't it? A. Yes, sir.

Q. At any rate, you reported a total profit on that job of \$38,870.27, didn't you?

A. \$38,870.28.

Q. In other words, you reported in 1944, as of August, 1944, a total profit of \$30,870.28, when, at the conclusion of the contract, the total profit was \$27,000-odd?

A. At the conclusion of the contract, yes. [482]

Q. And you broke down your profit from that contract, \$38,870, and you allocated \$35,000 of that, \$35,448.48 of that, to the year 1943?

A. Yes, sir.

Q. So you reflected a profit in 1943 of almost \$35,500 when your total profit on the whole job was only \$27,000? A. Yes, sir.

Q. In addition to that you added an additional profit in 1944 of \$3,421.79?

Mr. Winter: Is that additional?

Mr. Bischoff: Yes.

A. Well, in order to complete the total profit computed of \$38,870.27.

Q. As a matter of fact, at the time you made the examination, you could not determine what the profit on that job would be upon completion, could you? A. Not necessarily, no, sir.

(Testimony of W. G. Williams.)

Q. This figure of \$38,870, which you entered as the total, does not purport to represent the total profit on the contract, does it?

A. Not exactly, no, sir.

Q. It only purports to represent your estimate of the profit as of August, 1944?

A. That is right, sir. There were no further credits to income; there were no further charges to labor; therefore, the \$10,533.35, [483] which makes up the debit, must have been completely materials.

Now, before we proceed from there, Mr. Bischoff, it seems to me we should determine what Journal Entry 305 states.

Mr. Winter: Do you want to see Journal Entry 305?

Mr. Bischoff: Just a minute.

Mr. Winter: I think that the witness wants to offer an explanation of his answer by the journal entry.

The Court: You people stop jangling.

Mr. Winter: Yes, your Honor.

The Court: I want to wind this up this morning. I want it conducted on a more orderly basis.

Q. (Mr. Bischoff): Mr. Williams, my question was directed to you as to the situation as of August, 1944. That is what this is presumed to be, is that right? A. Yes.

Q. I call your attention to a figure of \$1,100 for the year 1944 under the label or heading "Estimated Additional Equipment Rental, \$1,100." You inserted that figure, didn't you? A. Yes, sir.

Q. You did not find any figures like that on the books, did you?

(Testimony of W. G. Williams.)

A. No, sir, that is estimated.

Q. That is an estimate you made of your own for additional equipment rental? A. Yes, sir.

Q. To apply the formula to this contract that you applied in the [484] preceding contract, Mr. Williams, wouldn't you have to wait until 1945 or, at any rate, until the end of the year 1944 and make your computations then?

A. In the present light, yes. At that time I had no other recourse.

The Court: While it is fresh in Mr. Williams' mind, let him see the journal entry, 305.

Q. (Mr. Bischoff): If there are any books you want to refer to, to make any explanation, just go ahead. A. May I read this, your Honor?

The Court: Anything you want.

A. This is the journal entry: Debit Job 213, \$10,533.37; Debit 217, \$1,428.26; Job 221, Kaiser Warehouse, \$714.13; and Credit Office Salaries, \$17,500.

The Court: Do you want to make any comment on that?

A. Well, at the time I was examining that contract, there were no further charges to labor, and this entry shows material charges subsequent to that time. There were no further credits to income. I had no idea or way of anticipating that they would take office salaries to the tune of \$10,000 and charge to this account.

Mr. Winter: In this particular year, 1944?

A. In this particular year, 1944.

(Testimony of W. G. Williams.)

Q. (Mr. Bischoff): You say that they had no right to allocate to their jobs the overhead involved in office salaries? [485]

A. Mr. Bischoff, I am trying to explain.

Q. All you mean is that at the time you made the examination——

The Court: He didn't say that they had no right. He said he had no idea.

Mr. Bischoff: I see.

Q. But at any rate you do not question the propriety of entering or allocating a part of the office salaries to that job at the end of the year or during the year, do you?

A. I am making no question now, no, sir.

Q. You know, too, don't you, that allocation was made was in part the Mason and Petersen earnings on those jobs? A. Yes, sir.

The Court: Are you talking about the plural, "jobs"?

Mr. Bischoff: That job.

The Court: What job was that?

Mr. Bischoff: 213 is the particular one I was questioning him about.

The Court: What is the name of it?

Mr. Bischoff: That was the Columbia Steel Casting Plant, 213, but in the journal entry there were several others of the same type and he read off the titles.

The Court: How big a job was it?

Mr. Bischoff: \$410,000; that is, up to that point.

The Court: Well, about \$400,000?

(Testimony of W. G. Williams.)

Mr. Bischoff: Yes. [486]

Q. Some time during the year, at any rate before the end of the year, they had to allocate and enter on the books the proportionate share of that kind of work in order to reflect the true income from that contract?

A. Mr. Mason and Mr. Petersen were paid by an allocation of a certain percentage of profits. It was not necessary to allocate those profits to any particular contract, but to charge them to profit and loss, as far as Mr. Hammond was concerned. Therefore, there may be a question as to the propriety of entering an allocation of profit on any particular contract, instead of to all contracts.

Q. Mr. Williams, it might not be material so far as the net amount of earnings from the whole operation is concerned, but so far as Mason and Petersen are concerned, it would be necessary to have that allocation to determine the profit from a particular contract, would it not?

A. It would, if, in their participation, the agreement read that they were to be paid a certain proportion of profits resulting only from the contracts on which they worked.

Q. Whatever proportion would come from the source of the work is a proper item, however, to be charged against the profit on that particular job?

A. Not necessarily.

Q. To determine the profit from that contract?

A. Not necessarily. If they were to be allocated profits from [487] Mr. Hammond's contractual

(Testimony of W. G. Williams.)

business, then their allocation of profits is a charge to profit and loss and not to any particular contract.

The Court: What was the total work Mr. Hammond did as covered by these contracts?

Mr. Winter: In any year?

The Court: I don't want in any year, but how many million dollars altogether?

Mr. Bischoff: Several million dollars.

The Court: Somebody guess. Who knows what he did?

Mr. Bischoff: Fifteen to eighteen million dollars of contracts, your Honor, is the estimate made by Mr. Hammond.

Q. Mr. Williams, in light of the fact that the account of this Job 213 shows that the profit on that job, when completed, was \$27,000-odd, isn't it fair to say that your allocation of \$35,444 profit in the year 1943 is a distortion, to use the term employed by Mr. Winter?

A. It would be a distortion, if that were a proper charge of \$10,000, participation of profits in their contractual business.

Q. As a matter of fact, by the formula you applied to this particular contract, you would produce about the same kind of a result that you criticized in the earlier contract, when you compared the profit as we reported it to the income in those years?

A. I do not admit that, no, sir. [488]

Q. You would not admit that?

A. Not in view of the nature of this debit.

(Testimony of W. G. Williams.)

Q. Will you turn to Contract 214, Oregon Wood-working? A. Yes.

Q. Is it open before you now? A. Yes.

Q. You did not raise any question about that one, did you? A. No, sir.

Q. The only profit involved in that whole business was \$286.05? A. Yes.

Q. Taking Contracts 215, 216, 217 and 220, was not the same situation true in each of those four cases and in 213—that is, when you made the examination, those contracts had not been completed and other items were accrued later.

I want to avoid going over the figures on each one separately, and I would like you to examine those to see if you can state if the same general situation did not exist with respect to those subsequent contracts?

A. In Job 215 that is true, only to the amount of \$414.17 charged August 31st.

Q. Will you state what the profit is upon completion?

A. \$8,984.81, on December 30, 1944.

Q. As against \$5,769.33 which you reported as of the time of your examination?

Mr. Winter: Do you want a piece of paper, Mr. Williams? [489] A. If you please.

Mr. Bischoff: Mr. Williams, maybe I can simplify my question so it won't require so much computation. As of the period of time when you made the examination, you just reported a profit of \$5,769.33, isn't that correct? A. Yes, sir.

(Testimony of W. G. Williams.)

Q. And the final profit on that contract, as of the end of that year, was eight thousand and what? Will you read that figure off? A. \$8,984.81.

Q. Would you examine the next one, No. 216, and see if the same general situation did not exist?

A. Yes, sir.

Q. That is, your examination was made before the completion of the contract? A. Yes, sir.

Q. You reported on No. 216 a profit of \$1,122.81, didn't you, as of the time you made the examination? A. Yes.

Q. What do the books report as the ultimate profit?

A. December 31, 1944, the total profit was \$814.86.

Mr. Winter: How much is that?

A. \$814.86.

Mr. Bischoff: Your Honor, if counsel on the other side would consent, we would like to excuse Mr. Hammond from further [490] attendance here. He is obliged to attend a very important Directors' meeting, set for 11:00 o'clock and, if he is not going to be wanted, we would like permission to excuse him.

Mr. Winter: I don't know of anything I want him for.

Mr. Bischoff: May he be excused?

The Court: Yes.

Q. (Mr. Bischoff): If you will turn to Contract No. 217, that was uncompleted when you made the examination in August, 1944, wasn't it?

A. Yes, sir.

(Testimony of W. G. Williams.)

Q. You reported for that contract, as of the time of your examination, a profit of \$19,192.80, is that correct? A. Yes, sir.

Q. What was the final profit reflected upon the close of that contract? A. \$13,382.33.

Q. Will you refer to Contract 220? That contract was not completed at the time of your examination, was it? A. No, sir.

Q. You reported a profit of \$1,554.56 on that contract, as of the time of this examination?

A. Yes, sir.

Q. And what was the profit disclosed at the end of the operation? A. A loss of \$1,252.22.

Q. Now, then, Mr. Williams, in the light of these facts, you [491] could not and, of course, did not, determine your ratio of profit to be applied in those years based upon the total completion of the contracts, did you?

A. I based it upon the total completion of the contract up to the time I made my examination, and in each one of those cases it looked as if the contract were practically wiped out.

Q. And, for the purpose of making your computation, and arriving at a ratio, you adopted the figures of income that were recorded on the books of the company in those years?

A. Yes. There have been some erasures in this account. I don't know what figures were erased.

Q. Are you suggesting that they have been erased since you made the examination?

A. I am making no suggestion, sir, but merely making a statement.

(Testimony of W. G. Williams.)

Q. You called attention to that. You must have had something in mind.

A. I had in mind that they did not seem to be the figures in here that would result in the profit which I showed in my report. There were no entries in the books after July 31st, 1944, except December 30th, entry of a loss of \$1,252.22. If your Honor will permit, I will take my working papers and see what analysis I have of this.

Mr. Bischoff: Please do that.

Mr. Winter: Do you want to come down here to get them?

A. Your Honor, may I go over to the bench for a few moments? [492]

The Court: Yes.

Mr. Winter: May I be excused for about three minutes, your Honor, to make an important telephone call?

The Court: Yes. We will have to wait, Mr. Williams, until Mr. Winter returns.

(Short intermission.)

The Court: Are you ready to proceed?

Mr. Winter: Yes, thank you, your Honor.

The Court: Mr. Williams, are you ready to proceed?

A. Yes. The figures which I copied from the books on Contract 220 show a total income of \$14,842. The books show \$14,842, the same figure.

The amount of labor which I copied from the general ledger as having been expended on this contract was \$3,544.31. The same figure is shown in the ledger.

(Testimony of W. G. Williams.)

In this ledger there are three columns. The ledger account for materials amounts to \$9,005.65. The figure which I copied from the ledger at the time I made my examination for materials was \$9,743.13, a total cost of \$13,287.44 to be deducted from \$14,842, or a net profit of \$1,554.56.

The only entries made in this ledger since I made my examination, or the only entry, is a debit in the amount of \$1,252.22.

I can't understand the discrepancy, your Honor. There have been a number of charges in this account. When they were [493] made I don't know, but I do know it would be inconceivable I would copy figures from this account with those discrepancies. There is no chance there for transposition.

Q. (Mr. Bischoff): Are there any figures in that book, up to the time you examined the books, that are different now from what they were when you examined them? That is what I would like to know. You threw in a statement about erasures, and I think we ought to clarify that.

A. I have not examined the books—this is the first instance that was noticeable brought to my attention.

Q. You had your working papers and you took off these entries. Aren't you able to tell us now if there has been any change in the figures here?

A. It would take about two hours' work to sit down and attempt to reconcile my figures with the figures in the book. That is not a simple question of law. It is a question of accounting.

(Testimony of W. G. Williams.)

Q. Mr. Williams, do you want that ledger any further?

A. If I am to go through some of these other accounts, I do.

Q. I am about to inquire about another matter.

A. Very well, if you are through with this. It is not too big a material difference, as far as I am concerned, in the final result.

Q. Of course, it is fair to state, whatever that erasure was, it was not with any intent——

A. I am not assuming that. [494]

Q. ——to deceive anybody?

A. I am not assuming that to be the case.

Q. With respect to the other contracts, those contracts in which provision was made for the retention of 10 per cent of materials that had been incorporated into the work and the retention of 25 per cent of materials that were on hand and not incorporated, having in mind that type of contract, Mr. Williams—there appear to be two contracts of that type among those that are listed in your report, to-wit, Contract 213 and Contract 216.

Did I understand you to say that the 10-per cent retained percentages had been accrued on the books?

A. Yes, sir.

Q. At the conclusion of yesterday's examination, you did not know whether the 25-per cent retention of materials not incorporated had been accrued on the books, is that correct? I mean, last night when we were questioning you about it, you didn't know whether it had or not.

(Testimony of W. G. Williams.)

A. It was my recollection that they had not, but I was not decided.

Q. Will you please turn to the ledger and journal and see now whether you can tell the Court whether this 25 per cent for materials had been accrued on those two contracts.

Now, Mr. Williams, I may say that we have available the pages which may facilitate the examination. With the permission of the Court, I will have Miss Novak give you the pages [495] so it will facilitate looking at the accounts.

You have now examined the records for the purpose of ascertaining whether the 25-per cent retention on materials which were not incorporated had been accrued on the books, have you?

A. In those two contracts that I examined.

Q. With respect to No. 213 and No. 216?

A. 213 and 216.

Q. Will you tell the Court whether you found whether or not those 25-per cent retentions were accrued on the books?

A. I found the 25-per cent retention to have been properly accrued on the books.

Mr. Bischoff: That is all.

Redirect Examination

By Mr. Winter:

Q. Just one or two questions. I think you stated on direct examination that you had been a Revenue Agent for twenty years, approximately?

A. Since 1922.

(Testimony of W. G. Williams.)

Q. And I think you told me this is the first time you have been called as a witness in any case which you have investigated, is that right?

A. Yes, sir.

Q. Now, Mr. Williams, Mr. Bischoff went into Contracts 215, 216, 217 and 220 at great length. Calling your attention to Contract [496] 215, in your allocation you understated the profit in that contract to the extent of about \$3,000, did you not?

A. Yes, sir.

Q. In other words, \$3,000 more profit than you included in your return or report?

A. Yes, sir.

Q. The next one, \$3,000 difference in the Government's favor; the first one, in the taxpayer's favor?

A. The first contract, 215, was in the taxpayer's favor, and 216, as I recall, there it was in the Government's favor about \$2,000.

Q. Under the Forgiveness Tax Act, which return became the 1943 return?

A. As I recall, the 1942 return was the major return.

Q. That became the return for 1943?

A. Yes.

Q. With respect to the 1944 return, no attempt was made by you to audit that return in this report?

A. No.

Q. Will you state what status that return is in now, at the present time?

A. That I don't know. I haven't the 1944 return.

Q. You have not examined it?

(Testimony of W. G. Williams.)

A. It has not been assigned to me.

Mr. Winter: I think that is conceded by counsel. The 1944 [497] return has not been closed.

Mr. Bischoff: Yes.

Q. (Mr. Winter): In other words, if there were additional allocations in 1944, the 1944 return will properly reflect them, if kept on a proper basis? A. Yes.

Q. And this won't have any effect on it, will it?

A. I would have to add up the increases and decreases. Such adjustment, if made at the end of 1944, would affect 1943.

Q. They could be made deductions in 1944. That would work those out?

A. That would work those out, yes.

Mr. Winter: That is all.

Recross-Examination

By Mr. Bischoff:

Q. With respect to these contracts, No. 213 down to No. 220, I did not quite understand. You say that your determination, which you made in your report for the year 1943, doesn't affect the determination of the deficiency that was arrived at here.

A. I don't quite understand it myself. You mean my determination of the deficiency will not be affected by such changes as you noted?

Q. Is that your testimony?

A. No, sir, according to my computation of the allocation of profits, it would affect 1943 to a certain extent. [498]

(Testimony of W. G. Williams.)

Q. That is the reason you examined both 1943 and 1944, to determine what you are going to throw into 1943 or take out of 1943 for the purpose of getting your comparison between 1942 and 1943 to make applicable the 75-per cent reduction in tax. You had to do that, didn't you?

A. Yes; that would change the percentage in a certain amount. It would not be too material, however.

Mr. Bischoff: That is all.

Mr. Winter: That is all.

(Witness excused.)

Mr. Winter: With the understanding that all the Government's exhibits that have been marked for identification are received in evidence, the Government rests.

(Defendant rests.)

Mr. Bischoff: The plaintiff rests.

(Testimony closed.)

The Court: You will want to brief this case and I will want it briefed substantially.

Mr. Bischoff: I beg your pardon?

The Court: Particularly with a statement being the equivalent of a pre-trial order, showing what each party deems to be the issue. [499]

Mr. Winter: Does your Honor request a transcript?

The Court: No.

Mr. Winter: I was going to inquire from the Reporter whether we could get a transcript, leaving out Mr. Bischoff's speeches and possibly any speeches I have made.

The Court: Take it up with the Reporter.

Mr. Bischoff: And may I inquire as to the time for briefs?

The Court: Thirty, thirty and twenty. [500]

REPORTER'S CERTIFICATE

I, Ira G. Holcomb, a Court Reporter of the above-entitled Court, duly appointed and qualified, do hereby certify that on the 12th, 13th, 14th, 15th and 16th days of January, A.D. 1948, I reported in shorthand certain proceedings had upon the pre-trial and trial of the above-entitled cause, that I subsequently caused my said shorthand notes to be reduced to typewriting, and that the foregoing transcript, pages numbered 1 to 500, both inclusive, constitutes a full, true and accurate transcript of said proceedings, so taken by me in shorthand on said dates as aforesaid, and of the whole thereof.

Dated this 25th day of February, A.D. 1948.

/s/ IRA G. HOLCOMB,
Court Reporter.

[Endorsed]: Filed Mar. 6, 1948. [501]

PLAINTIFF'S EXHIBIT No. 1

Treasury Department
Washington

IT:E:6

LBV

July 7, 1938

Mr. Ross B. Hammond,
1214 Spalding Building,
Portland, Oregon.

Sir:

Reference is made to your letter dated May 9, 1938, submitting additional information in connection with your request for permission to change your method of reporting income from the cash to the accrual basis beginning with the taxable year ending December 31, 1938.

It is stated that at December 31, 1937, you had no accrual of income not received, no income received in advance of when earned, no expenses accrued but not paid, and no expenses prepaid.

It appears from the information submitted that there will be no duplicated or omitted items of income or deduction.

Predicated on the foregoing, permission is hereby granted you to change your method of reporting income from the cash to the accrual basis, beginning with the taxable year ending December 31, 1938.

A copy of this letter should be attached to your return for the taxable year ending December 31, 1938, as evidence of the authority given you to re-

port your net income on the accrual basis for Federal income tax purposes.

Respectfully,

MILTON E. CARTER,
Acting Commissioner.

[Endorsed]: Filed Oct. 25, 1948.

PLAINTIFF'S EXHIBIT No. 3
AGREEMENT AND ARTICLES OF
PARTNERSHIP

The following Agreement and Articles entered into on this 3rd day of February, 1942, by and between Ross B. Hammond and William A. Hammond, both of Portland, Multnomah County, Oregon;

Witnesseth:

That, Whereas, Ross B. Hammond has heretofore been conducting a general contracting business under the name and style of "Ross B. Hammond Co."; and

Whereas, William A. Hammond has directed his studies and education to the end that he might become associated with said company as a member of said firm; and

Whereas, some years ago the said William A. Hammond completed his education and qualified himself as an expert construction engineer, and has for some time been in the employ of the said Ross B. Hammond Co. in that capacity; and

Whereas, after serving a short time in the Armed Forces of the United States, the said William A. Hammond has now been rejected for said service, and

Whereas, the said Ross B. Hammond Co. is bidding upon many building projects and said company proposes to engage in extensive construction contracts in furtherance of the defense program of the United States of America; and

Whereas, the said Ross B. Hammond desires to be relieved of some of the duties and responsibilities of the management of said business, and desires to further develop the knowledge and experience of the said William A. Hammond in the construction field; and

Whereas, the said Ross B. Hammond has this day sold to the said William A. Hammond a one-fourth interest in the assets and business of the said Ross B. Hammond Co.,

Now, Therefore, It Is Mutually Understood and Agreed By and between the parties hereto that they do hereby form a partnership and that the following agreements shall constitute their

ARTICLES OF PARTNERSHIP

I.

Said parties above named agree to carry on **business under the name and style of Ross B. Hammond Co.**

II.

The partnership to which this agreement applies began on this the 3rd day of February, 1942, and

shall continue for the duration of the joint lives of the parties hereto, unless dissolved by action of the parties or otherwise.

III.

The enterprises, businesses, pursuits, and occupations in which the partnership proposes to engage are as follows:

To carry on within the State of Oregon and elsewhere a general contracting and engineering business for the construction, building, erection, repairing, razing, remodeling, enlarging, removing and leasing of buildings and structures, and otherwise engaging in any work upon buildings, roads, highways, manufacturing plants, bridges, piers, docks, mines, shafts, water works, railroads, railway structures and on iron, steel, wood, concrete, masonry and earth construction, and to extend and receive any contracts or assignments of contracts therefor, relating thereto or connected therewith and to manufacture and furnish the building materials and supplies connected therewith.

To purchase or otherwise acquire, own, mortgage, pledge, sell, assign and transfer or dispose of, to invest, trade, deal in and deal with goods, wares and merchandise and real and personal property of every class and description.

In general, to carry on any other business in connection with the foregoing that it may find it convenient, expedient or necessary in order to fully accomplish said objects and purposes, and to do

any and all of the things hereinabove set forth to the same extent as natural persons might or could do.

IV.

The principal office and place of business of the partnership shall be in the City of Portland, Multnomah County, Oregon, and/or at such other place or places as the partners shall hereafter determine.

V.

The capital of the said partnership shall consist of the assets formerly owned by Ross B. Hammond Co., together with such contributions to the capital as may hereafter be made to the partnership by the partners and all the income and profits arising from the employment of said assets in the business conducted hereunder and not paid to the partners in drawing or by disbursement of profits, and the interests of the respective partners hereto shall be as follows:

Ross B. Hammond.....	75%
William A. Hammond.....	25%

VI.

The partnership hereby assumes all the liabilities of the said Ross B. Hammond Co., including liabilities incurred by the said Ross B. Hammond in agreements entered into with Henry M. Mason and A. V. Petersen, covering employment of said parties upon a profit sharing basis; and the said William A. Hammond specifically agrees that his

share in the profits and the losses of the company shall be computed subject to the payments which shall accrue to the said Henry M. Mason and A. V. Petersen under the terms of said agreements.

It is further agreed by and between the parties hereto that the drawings of the partners from the business of the company will be limited as follows:

Ross B. Hammond. \$22,500 per annum

William A. Hammond. 7,500 per annum

and it is mutually understood and agreed that any earnings in any year in excess of said amounts totaling \$30,000.00 per year shall be permitted to remain in and as a part of the funds of the company to be used for working capital of the said Ross B. Hammond Co., and it is further agreed that the funds so remaining in the business of the company shall not be subject to the payment of any interest.

VII.

The profits and losses of the partnership business shall be borne by the parties in the proportion to the interest designated in Paragraph V. above.

VIII.

Each of the parties shall have an equal voice in the control of the business and operation of the partnership. It shall be the duty of the partnership to keep accurate books of account, which shall be open at all reasonable times to the inspection and examination of each of the partners.

IX.

Upon the dissolution of the partnership at or prior to the death of any of the partners, the said business shall be wound up, debts of the partners to the partnership, if any, paid, and the surplus divided between the partners according to their respective interests as herein set forth.

In Witness Whereof, the parties hereto have caused their signatures to be affixed to these Articles of Partnership on the day and date first above written.

/s/ R. B. HAMMOND,
/s/ W. A. HAMMOND.

State of Oregon,
County of Multnomah—ss.

Be It Remembered that on this 3rd day of February, 1942, before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named Ross B. Hammond and William A. Hammond who are known to me to be the identical persons described in and who executed the within instrument and acknowledged to me that they executed the same freely and voluntarily.

In Testimony Whereof, I have hereunto set my hand and notarial seal the day and year last above written.

[Seal] /s/ ROSALIE NOVAK,
Notary Public for Oregon.
My Commission Expires: 10/21/42.

PRE-TRIAL EXHIBIT No. 4

AGREEMENT OF EMPLOYMENT

This Agreement, made and entered into on this 3rd day of February, 1942, by and between Ross B. Hammond, sole proprietor, doing business as Ross B. Hammond Co., hereinafter called "First Party," and Henry M. Mason, hereinafter called "Second Party"

Witnesseth:

Whereas the Second Party has been in the employ of the First Party almost continuously for a period of thirteen years, and the First Party recognizing the value of the services, ability, and trustworthiness of the Second Party, and the First Party wishing to permit the Second Party to participate in the profits of the First Party's contracting business; and

Whereas the Second Party has been acting as General Superintendent and General Manager of the construction business of the First Party, with full power of attorney to sign all documents, and subject only to direction of the First Party; and

Whereas the First Party wishing to have the Second Party assume a greater responsibility in connection with the management of the general contracting activities of the First Party;

Now, Therefore, the Parties hereto, agree as follows:

1. Compensation of Second Party and Method of Payment: The First Party hereby agrees that he will pay for the services of the Second Party by permitting him to participate in the net profits

of the operation of the First Party's construction business upon the basis of twenty (20) per cent of the profits earned each calendar year, after all operating, financing, administrative, and other like expenses have been deducted, but before deduction of State and Federal Income Taxes.

It is specifically understood and recognized between the parties that the operations of this business require the use of large sums of money to be available for financing the operation of the construction and contracting business, and, therefore, to insure the continued success of the business and to provide ample working capital, it is hereby agreed that the earnings of the Second Party shall be paid to him on a basis of a drawing account of Five Hundred Dollars (\$500.00) per month, but the Second Party will not be permitted to withdraw in excess of Ten Thousand Dollars (\$10,000.00) per year. Any funds amounting to more than \$10,000.00 per year shall be permitted to remain in the company, to be used for working capital for use in the contracting and constructing business of the First Party. These funds in excess of \$10,000.00 that shall be permitted to remain under the control of the First Party for financing and working capital of the construction business of the First Party shall bear no interest.

2. Cancellation: This agreement may be cancelled by either party giving the other party 90 days' written notice, and/or the same may be changed or modified at any time by mutual consent of the parties hereto. It is further understood

and agreed that said contract will be automatically cancelled if the said Second Party should leave the employ of the First Party of his own accord.

The Second Party further expressly agrees that should he sever his connection with First Party and desire to withdraw the earnings accumulated to his account, he will give one year's written notice thereof to the First Party, and the First Party will not be obligated to pay such funds to the Second Party until one year after receipt of said written notice from the Second Party.

Should Second Party elect to cancel this agreement or voluntarily leave the service of the First Party, then, and in either event, Second Party shall not receive any percentage of any profit earned by the First Party upon any work done or any contracts entered into during such calendar year, and the payment to the said Second Party of an amount equal to \$500.00 per month for the time employed during such current calendar year shall constitute full and complete payment for all services and/or use of the funds of the said Second Party for said current calendar year.

Should the First Party desire to cancel this agreement, he shall notify the Second Party in writing ninety (90) days prior to the date of such cancellation and the compensation due the Second Party shall be upon the basis of twenty (20) per cent of the net profits, as described in paragraph 1 hereof, as shown by the books of the First Party, from January 1st of that year to the date of written notice of cancellation, plus \$1,500.00 to cover

compensation for the 90 days employment service from the date of written notice.

3. Drawing Account: Should the drawing account of \$500.00 per month, or \$6,000.00 per year, as defined in Paragraph 1 above, exceed in any calendar year the percentage of profits to which the Second Party is entitled under this agreement, this difference between the amount of money to which the Second Party is entitled for his services on the basis of this agreement, as outlined in Paragraph 1, shall be charged against any moneys which have accrued to the account of the Second Party, and the amount of money owing the Second Party by the First Party shall be reduced by this amount.

4. Nature of Agreement: It is expressly understood and agreed by and between the parties hereto that this agreement is a contract of employment and that the Second Party does not hereby acquire a proprietary interest in the business of the First Party, but the amounts paid to Second Party shall represent compensation for services rendered.

In Witness Whereof, the parties hereto have affixed their names and seals to the within agreement on the day and date first above given.

ROSS B. HAMMOND CO.,
By /s/ R. B. HAMMOND,
First Party.

/s/ H. M. MASON,
Second Party.

Subscribed and sworn to before me, the undersigned, a Notary Public, on this 3rd day of February, 1942.

[Seal] /s/ ROSALIE NOVAK,
Notary Public for Oregon.
My Commission Expires: 10/21/42.

PRE-TRIAL EXHIBIT No. 5

AGREEMENT OF EMPLOYMENT

This Agreement, made and entered into on this 3rd day of February, 1942, by and between Ross B. Hammond, sole proprietor, doing business as Ross B. Hammond Co., hereinafter called "First Party," and A. V. Petersen, hereinafter called "Second Party"

Witnesseth:

Whereas the First Party recognizing the value of the services, ability, and trustworthiness of the Second Party, and the First Party wishing to permit the Second Party to participate in the profits of the First Party's contracting business; and

Whereas the Second Party has been in the employ of the First Party for more than six years, and in responsible charge of large construction work, and

Whereas the First Party wishing to have the Second Party take more responsibility in connection with all the construction activities of the First Party;

Now, Therefore, the Parties hereto, agree as follows:

1. Compensation of Second Party and Method of Payment: The First Party hereby agrees that he will pay for the services of the Second Party by permitting him to participate in the net profits of the operation of the First Party's construction business upon the basis of fifteen (15) per cent of the profits earned each calendar year, after all operating, financing, administrative, and other like expenses have been deducted, but before deduction of State and Federal Income Taxes.

It is specifically understood and recognized between the parties that the operations of this business require the use of large sums of money to be available for financing the operation of the construction and contracting business, and, therefore, to insure the continued success of the business and to provide ample working capital, it is hereby agreed that the earnings of the Second Party shall be paid to him on a basis of a drawing account of Four Hundred Dollars (\$400.00) per month, but the Second Party will not be permitted to withdraw in excess of Seven Thousand Five Hundred Dollars (\$7,500.00) per year. Any funds amounting to more than \$7,500.00 per year shall be permitted to remain in the company, to be used for working capital for use in the contracting and constructing business of the First Party. These funds in excess of \$7,500.00 that shall be permitted to remain under the control of the First Party

for financing and working capital of the construction business of the First Party shall bear no interest.

2. Cancellation: This agreement may be cancelled by either party giving the other party ninety (90) days' written notice, and/or the same may be changed or modified at any time by mutual consent of the parties hereto. It is further understood and agreed that said contract will be automatically cancelled if the said Second Party should leave the employ of the First Party of his own accord.

The Second Party further expressly agrees that should he sever his connection with First Party and desire to withdraw the earnings accumulated to his account, he will give one year's written notice thereof to the First Party, and the First Party will not be obligated to pay such funds to the Second Party until one year after receipt of said written notice from the Second Party.

Should Second Party elect to cancel this agreement or voluntarily leave the service of the First Party, then, and in either event, Second Party shall not receive any percentage of any profit earned by the First Party upon any work done or any contracts entered into during such calendar year, and the payment to the said Second Party of an amount equal to \$400.00 per month for the time employed during said current calendar year shall constitute full and complete payment for all services and/or the use of the funds of the said Second Party for said current calendar year.

Should the First Party desire to cancel this agreement, he shall notify the Second Party in writing ninety (90) days prior to the date of such cancellation and the compensation due the Second Party shall be upon the basis of fifteen (15) per cent of the net profits, as described in paragraph 1 hereof, as shown by the books of the First Party, from January 1st of that year to the date of written notice of cancellation, plus \$1,200.00 to cover compensation for the 90 days employment service from the date of the written notice.

3. Drawing Account: Should the drawing account of \$400.00 per month, or \$4,800.00 per year, as defined in Paragraph 1 above, exceed in any calendar year the percentage of profits to which the Second Party is entitled under this agreement, this difference between the amount of money to which the Second Party is entitled for his services on the basis of this agreement, as outlined in Paragraph 1, shall be charged against any moneys which have accrued to the account of the Second Party, and the amount of money owing the Second Party by the First Party shall be reduced by this amount.

4. Nature of Agreement: It is expressly understood and agreed by and between the parties hereto that this agreement is a contract of employment and that the Second Party does not hereby acquire a proprietary interest in the business of the First Party, but the amounts paid to Second Party shall represent compensation for services rendered.

In Witness Whereof, the parties hereto have affixed their names and seals to the within agreement on the day and date first above given.

ROSS B. HAMMOND CO.

By /s/ R. B. HAMMOND,

First Party.

/s/ A. V. PETERSEN,

Second Party.

Subscribed and sworn to before me, the undersigned, a Notary Public, on this 3rd day of February, 1942.

[Seal] /s/ ROSALIE NOVAK,

Notary Public for Oregon.

My Commission Expires: 10/21/42.

UNITED STATES
INDIVIDUAL INCOME TAX RETURN

Page 1
1942

OPTIONAL FORM 1040 MAY BE FILED INSTEAD OF THIS FORM IF GROSS INCOME IS REPORTED ON THE CASE BASIS FOR THE CALENDAR YEAR, IS NOT MORE THAN \$200, AND CONSISTS WHOLLY OF SALARY, UNDER OTHER COMPENSATION FOR PERSONAL SERVICES, DIVIDENDS, INTEREST OR ANNUITIES.

FOR CALENDAR YEAR 1942

or fiscal year beginning 1942, and ending 1942

PRINT NAME AND ADDRESS FULLY. (Show Suffixes in Parentheses)

ROSS B. HARRISON

(Street) (Show full names of both husband and wife, if different, in parentheses)

P. O. Box 3901 - 1241 N. Williams Ave.

(Street and number, or rural route)

Portland, Oregon

(Post office)

(County)

(State)

Building Construction

(Occupation)

(Should identify number, if any)

(Name and address of employer)

(If more than one employer, attach statement showing name and address and amount received from each)

(Do not use these spaces)

307
241169

Oregon
RECEIVED
MAY 15 1943
1
CASH - 100.00
Cash - 100.00

42377

Items and Instructions No.	INCOME	Amount	Deductible Expenses (Attach itemized statement)	
1. Salaries and other compensation for personal services, \$				
2. Dividends				
3. Interest on bank deposits, notes, etc.				91.64
4. Interest on corporation bonds, etc.				
5. Interest on Government obligations, etc.:				
(a) From line (b), Schedule A				
(b) From line (f), Schedule A				
6. Rents and royalties. (From Schedule B)				(2,688.19)
7. Annuities				20.04
ITEMS 8, 9, AND 10, BELOW (AND PAGES 3 AND 4) NEED NOT BE CONSIDERED UNLESS YOU HAVE INCOME (OR LOSSES) IN ADDITION TO ITEMS ABOVE.				
8. (a) Net gain (or loss) from sale or exchange of capital assets. (From Schedule F)				1,751.09
(b) Net gain (or loss) from sale or exchange of property other than capital assets. (From Schedule G)				(4,755.42)
9. Net profit (or loss) from business or profession. (From Schedule H)				149,089.15
(State total receipts, from line 1, Schedule H, \$)				
10. Income (or loss) from partnerships; fiduciary income; and other income. (From Schedule I)				
11. Total income in items 1 to 10				\$ 143,508.31
DEDUCTIONS				
12. Contributions paid. (Explain in Schedule C)				\$ 900.50
13. Interest. (Explain in Schedule C)				59.79
14. Taxes. (Explain in Schedule C)				3,881.84
15. Losses from fire, storm, shipwreck, or other casualty, or theft. (Explain in Schedule C)				
16. Bad debts. (Explain in Schedule C)				
17. Other deductions authorized by law. (Explain in Schedule C)				
18. Total deductions in items 12 to 17				4,842.13
19. Net income (item 11 minus item 18)				\$ 138,666.18
COMPUTATION OF TAX				
20. Net income (item 19 above)	138,666.18	\$ 138,666.18		
21. Less: Personal exemption. (From Schedule D-1)	\$ 1,200.00			
22. Credit for dependents. (From Schedule D-2)	350.00	1,550.00		
23. Balance (surplus net income)	137,116.18	\$ 137,116.18		
24. Less: Item 5 (a) above	\$			
25. Earned income credit. (From Schedule E-1 or E-2)	1,400.00	1,400.00		
26. Balance subject to normal tax	135,716.18	\$ 135,716.18		
27. Normal tax (6% of item 26)				\$ 8,144.30
28. Surtax on item 23. (See Instruction 28)				171.83
29. Total tax (item 27 plus item 28)				8,316.13
30. Total tax (item 29 or line 16, Schedule F)				8,316.13
31. Less: Income tax paid at source				
32. Income tax paid to a foreign country or U.S. possession. (Attach Form 114)				
33. Balance of tax (item 30 minus items 31 and 32)				\$

I declare, under the penalties of perjury, that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return made in good faith, for the calendar year or other period covered by this Internal Revenue Code and the regulations issued under authority thereof.

Signature of person (other than taxpayer or agent) preparing return: (Date)

Signature of taxpayer: (Date)

(If this is a joint return (not made by agent) it must be signed by both husband and wife. A return made by an agent must be accompanied by power of attorney. (See Instructions 33))

Schedule A.—INTEREST ON GOVERNMENT OBLIGATIONS, ETC. (See Instruction 5)

1. Obligations or securities	2. Amount owned at end of year on holding year proportionate share of such obligations held by estate, trust, partnership, or common trust funds	3. Interest received or accrued during the year	4. Amount of personal interest, on which is exempt from tax	5. Interest on amount in column 4, exemption, and dividends subject to surtax only
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or United States possessions.	\$	\$	All	XXXXXXXXXX
(b) Obligations issued prior to March 1, 1941, under Federal Farm Loan Act, or under such Act as amended.			All	XXXXXXXXXX
(c) Obligations of United States issued on or before September 1, 1917.			All	XXXXXXXXXX
(d) Treasury Notes issued prior to December 1, 1940, Treasury Bills and Treasury Certificates of Indebtedness issued prior to March 1, 1941.			All	XXXXXXXXXX
(e) United States Savings Bonds and Treasury Bonds issued prior to March 1, 1941.			\$5,000	\$
(f) Obligations of instrumentalities of the United States (other than obligations to be reported in (g) above) issued prior to March 1, 1941.			None	
(g) Dividends on share accounts in Federal savings and loan associations in case of shares issued prior to March 20, 1942.	XXXXXXXXXX	XXXXXXXXXX	XXXX	
(h) Total (enter on item 5 (d), page 1).				\$

(i) Treasury Notes issued on or after December 1, 1940, and obligations issued on or after March 1, 1941, by the United States or any agency or instrumentality thereof (enter amount of interest as item 5 (d), page 1).

Amount owned at end of year	Interest received or accrued during the year (subject to normal tax and surtax)
\$	\$

Schedule B.—INCOME FROM RENTS AND ROYALTIES. (See Instruction 6)

1. Description	2. Amount	3. Depreciation or depletion (attach schedule)	4. Repairs (caption below)	5. Other expenses (caption below)	6. Net profit (column 2 minus sum of columns 3, 4, and 5) (enter as item 6, page 1)
	\$	\$	\$	\$	\$

Explanation of deductions claimed in columns 4 and 5.

Schedule C.—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 12, 13, 14, 15, 16, AND 17

1. Item No.	2. Explanation	3. Amount	1. Item No. (Continued)	2. Explanation (Continued)	3. Amount (Continued)
14-Taxes	Real Estate	\$ 786.38			
	State Income	3,095.46			
		3,881.84			

Schedule D.—EXPLANATION OF CREDITS CLAIMED IN ITEMS 21 AND 22. (See Instructions 21 and 22)

(1) Personal Exemption			(2) Credit for Dependents		
Status	Number of months during the year in such status	Credit claimed	Name of dependent and relationship	Number of months during the year Under 18 years old 18 years or over	Credit claimed
Single, or married and not living with husband or wife, and not head of family.	12	\$	C. F. Hammond		
Married and living with husband or wife.	12	1,200.00	Father	12	350.00
Head of family (caption below)					

Reason for support if 18 years or over: Father 86 years old. Too age

Schedule E.—COMPUTATION OF EARNED INCOME CREDIT. (See Instruction 25) for self support

(1) If gross net income is \$3,000 or less, use only this part of schedule	(2) If gross net income is more than \$3,000, use only this part of schedule
Net income (Item 19, page 1)	Earned net income (not more than \$14,000)
\$	\$ 14,000.00
Excess income credit (10% of net income, above)	Net income (Item 19, page 1)
	138,666.18
	Earned income credit (10% of earned net income or 10% of net income, above, whichever amount is smaller, but do not enter less than \$300)
	1,400.00

QUESTIONS

1. Did you file a return for any prior year? Yes If so, what was the latest year? 1941 To which Collector's office was it sent?

2. If separate return was made for the current year, state:
(a) Name of husband or wife Katherine S. Hammond
(b) Personal exemption, if any, claimed thereon None
(c) Collector's office to which it was sent Same

3. Check whether this return was prepared on the cash ☐ or accrual ☒ basis.

4. Was the rate of your salary or wages increased or decreased after October 3, 1942, and before the end of your taxable year? No (Yes or No)

5. Did you receive during your taxable year any amount claimed to be non-taxable other than interest reported in Schedule A (see Instruction H)? No If so, attach schedule showing source, nature, and amount of such income.

6. Did you at any time during your taxable year own directly or indirectly any stock of a foreign corporation or a personal holding company as defined by section 501 of the Internal Revenue Code? No If so, attach statement required by Instruction K.

DETACH PAGES 3 AND 4 IF NOT USED

Page 2

Schedule F.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS. (See Instruction A)

1. Kind of property (If summary, attach statement of descriptive details not shown below)	2. Date acquired Mo. Day Year	3. Date sold Mo. Day Year	4. Gross sales price (construct price)	5. Cost or other basis	6. Expenses of sale and cost of improvements subsequent to acquisition or March 1, 1913	7. Depreciation allowed (or allowable) since acquisition or March 1, 1913 (explain in Schedule J)	8. Gain or loss (column 4 plus column 7 minus the sum of columns 5 and 6)	9. Percent gain or loss to the 1913 value or 1913 cost	10. Amount
SHORT-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD NOT MORE THAN 6 MONTHS									
			\$	\$	\$	\$	\$	100	\$
								100	
								100	
								100	

Total net short-term capital gain or loss (enter in line 1, column 3, of summary below)

LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 6 MONTHS

Smith Pavar	2/28/39	1942	\$4,000.00	2,232.44	\$1,835.44	3,502.19	50	2,751.09
							50	
							50	
							50	

Total net long-term capital gain or loss (enter in line 2, column 3, of summary below)

SUMMARY OF CAPITAL GAINS AND LOSSES

1. Classification	2. Net short-term capital gain or loss of preceding taxable year (net in excess of net losses for each year), but only to extent of net short-term capital gain of current year	3. Net gain or loss to be taken into account from column 10, above	4. Net gain or loss to be taken into account from partnerships and common trust funds	5. Total net gain or loss taken into account in columns 2, 3, and 4 of this summary
		(a) Gain (b) Loss	(a) Gain (b) Loss	(a) Gain (b) Loss
1. Total net short-term capital gain or loss	\$	\$	\$	\$
2. Total net long-term capital gain or loss	\$	\$	\$	\$
3. Net gain in column 5, lines 1 and 2. (Enter as item 8 (a), page 1)				
4. Net loss in column 5, lines 1 and 2. (The amount to be entered as item 8 (a), page 1, is (1) this item or (2) net income, computed without regard to capital gains or losses, or (3) \$1,000, whichever is smallest)				

COMPUTATION OF ALTERNATIVE TAX

Use only if you had an excess of net long-term capital gain over net short-term capital loss, and item 23, page 1, exceeds \$18,000

1. Net income (item 19, page 1)	\$138,666.28	10. Normal tax (6% of line 9)	\$8,037.91
2. Excess of net long-term capital gain over net short-term capital loss (line 2, column 5 (a), minus line 1, column 5 (b), of summary above)	2,751.09	11. Surtax on line 6. (See Instruction 28)	87,078.62
3. Ordinary net income (line 1 minus line 2)	\$135,915.09	12. Partial tax (line 10 plus line 11)	\$95,116.53
4. Less: Personal exemptions. (From Schedule D-1)	\$2,200.00	13. 50% of line 2	875.56
5. Credit for dependents. (From Schedule D-2)	350	14. Alternative tax (line 12 plus line 13)	\$95,991.87
6. Balance (nurtax net income)	\$135,365.09	15. Total normal tax and surtax (item 29, page 1)	\$90,623.57
7. Less: Item 5 (a), page 1	\$1,400	16. Tax liability (line 14 or line 15, whichever is the lesser). (Enter as item 30, page 1)	\$95,991.87
8. Earned income credit. (From Schedule E-1 or E-2)	1,400.00		
9. Balance subject to normal tax	\$133,965.09		

Schedule G.—GAINS AND LOSSES FROM SALES OR EXCHANGES OF PROPERTY OTHER THAN CAPITAL ASSETS (See Instruction 8)

1. Kind of property	2. Date acquired	3. Gross sales price (construct price)	4. Cost or other basis	5. Expenses of sale and cost of improvements subsequent to acquisition or March 1, 1913	6. Depreciation allowed (or allowable) since acquisition or March 1, 1913 (explain in Schedule J)	7. Gain or loss (column 3 plus column 6 minus the sum of columns 4 and 5)
Land 3.839A.	1/1/38	\$900.00	\$2,000.00	\$10.10		\$2,110.10
Land		\$500.00	\$4,145.32			\$(3,645.32)

Total net gain (or loss) (enter as item 8 (J), page 1)

State the family, fiduciary, or business relationship to you, if any, of purchaser of any of the items on this page

If any of such items were acquired by you other than by purchase, explain fully how acquired

1. Total receipts

OTHER BUSINESS DEDUCTIONS

11. Salaries and wages not included in "Labor" (do not deduct compensation for yourself).....

2. Merchandise bought for sale	15. Bad debts arising from sales or services
--------------------------------	--

4. Labor	16. Depreciation, obsolescence, and depletion (explain in Schedule D)
----------	---

5. Materials and supplies	17. Rent, repairs, and other expenses (itemize below or on separate sheet)
---------------------------	--

[illegible]

3	7-1 (F 2-1)	4	18. Ascertaining of emergency facilities (attach statement)
---	-------------	---	---

10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	-----

19. Local of 11 to 16		
-----------------------	--	--

9. Net cost of goods sold (line 7 minus line 8),	\$	20.	Total of lines 9 and 19	\$
--	----	-----	-------------------------	----

20. Gross profit (line 1 minus line 9).....	\$.....	21. Net profit (or loss) (line 1 minus line 20) (enter as item 9, page 1) | \$.....
---	---------	---

If the production, manufacture, purchase, or sale of merchandise is an income-producing factor, inventories are required. $\text{Exp} = \text{COGS} = \text{COGS} - \text{M} = \text{COGS} - \text{M}$

and 8 to indicate whether inventories are valued at cost, or cost or market, whichever is lower.

Explanation of deductions claimed in lines 6, 14, and 17

Did you at any time after October 3, 1942, and before the end of your taxable year have in your employ more than eight individuals?

answer is "Yes," have you in this return taken a deduction for any amount of wages or salaries representing an increase or decrease in ^(Y₁ - N₀) after

1. If answer to second question is "Yes" attach a statement explaining all such information and

ANSWER 2. (Yes or No) ☐ Yes ☒ No

such increases, or decreases required the prior approval of the National War Labor Board or the Commissioner of Internal Revenue as stated in instruction

attach also a copy of the authorization for each of such increases or decreases.

Schedule J.—INCOME FROM PARTNERSHIPS, FIDUCIARIES, AND OTHER SOURCES

INCOME (OR LOSS) FROM PARTNERSHIPS, SYNDICATES, ETC. (SEE INSTRUCTION 10 (a)) (FURNISH NAMES AND ADDRESSES)

[illegible][illegible]

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150	151	152	153	154	155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180	181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210	211	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	236	237	238	239	240	241	242	243	244	245	246	247	248	249	250	251	252	253	254	255	256	257	258	259	260	261	262	263	264	265	266	267	268	269	270	271	272	273	274	275	276	277	278	279	280	281	282	283	284	285	286	287	288	289	290	291	292	293	294	295	296	297	298	299	300	301	302	303	304	305	306	307	308	309	310	311	312	313	314	315	316	317	318	319	320	321	322	323	324	325	326	327	328	329	330	331	332	333	334	335	336	337	338	339	340	341	342	343	344	345	346	347	348	349	350	351	352	353	354	355	356	357	358	359	360	361	362	363	364	365	366	367	368	369	370	371	372	373	374	375	376	377	378	379	380	381	382	383	384	385	386	387	388	389	390	391	392	393	394	395	396	397	398	399	400	401	402	403	404	405	406	407	408	409	410	411	412	413	414	415	416	417	418	419	420	421	422	423	424	425	426	427	428	429	430	431	432	433	434	435	436	437	438	439	440	441	442	443	444	445	446	447	448	449	450	451	452	453	454	455	456	457	458	459	460	461	462	463	464	465	466
---	---	---	---	---	---	---	---	---	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----

INCOME FROM FOREIGNSOURCES (FOREIGN EARNINGS AND ACCRUALS)

--	--	--	--

§	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150	151	152	153	154	155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180	181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210	211	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	236	237	238	239	240	241	242	243	244	245	246	247	248	249	250	251	252	253	254	255	256	257	258	259	260	261	262	263	264	265	266	267	268	269	270	271	272	273	274	275	276	277	278	279	280	281	282	283	284	285	286	287	288	289	290	291	292	293	294	295	296	297	298	299	300	301	302	303	304	305	306	307	308	309	310	311	312	313	314	315	316	317	318	319	320	321	322	323	324	325	326	327	328	329	330	331	332	333	334	335	336	337	338	339	340	341	342	343	344	345	346	347	348	349	350	351	352	353	354	355	356	357	358	359	360	361	362	363	364	365	366	367	368	369	370	371	372	373	374	375	376	377	378	379	380	381	382	383	384	385	386	387	388	389	390	391	392	393	394	395	396	397	398	399	400	401	402	403	404	405	406	407	408	409	410	411	412	413	414	415	416	417	418	419	420	421	422	423	424	425	426	427	428	429	430	431	432	433	434	435	436	437	438	439	440	441	442	443	444	445	446	447	448	449	450	451	452	453	454	455	456	457	458	459	460	461	462	463	464	465	466	467	468	469	470	471	472	473	474
---	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----

INCOME FROM OTHER SOURCES (STATE NATURAL)

--	--	--	--	--

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
---	---	---	---	---	---	---	---	---	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	-----

[illegible]

Total amounts in Schedule I. (Enter as item 10, page 1) \$

Schedule J.—EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES F, G, AND H

[illegible]

6-4

RANCH PROFIT & LOSS STATEMENT

Year Ending 12/31/42

	<u>Cattle</u>	<u>Dairy Herd & Heifers</u>	<u>Horses</u>	<u>Grain & Hay</u>	<u>Total</u>
Inventory 12/31/42	18,283.45	4,035.00	640.00	3,415.15	\$ 24,373.60
Sales During Year	13,531.69	563.15	264.00	101.28	14,460.12
	<u>29,815.14</u>	<u>4,598.15</u>	<u>904.00</u>	<u>3,516.43</u>	<u>38,833.72</u>
Inventory 1/1/42	19,065.00	2,990.00	975.00	2,798.22	25,828.22
Purchases During Year	625.08	1,488.06	425.00	3,154.26	5,692.40
	<u>19,690.08</u>	<u>4,478.06</u>	<u>1,400.00</u>	<u>5,952.48</u>	<u>31,520.62</u>

GROSS PROFIT

10,125.06

(496.00)

(2,436.05)

7,313.10

Other Income

Milk and Cream Sales
Misc. Income
TOTAL GROSS INCOME

5,638.29
490.25

6,128.54
\$ 13,441.64

EXPENSES:

Rent
Wages
Repairs
Gas, Oil & Tires
Pasture Beef
General Dairy Exp.
Miscellaneous
Depreciation

2,687.10
5,787.19
1,311.48
807.13
250.00
156.19
494.33
2,242.76

Expenses Forward
Meats, Groc. & Board
Fuel, Light & Power
Phone
Interest
Insurance
Taxes
Total Expense

906.01
649.28
167.72
40.92
407.53
222.19

\$ 16,129.83

NET LOSS YEAR ENDING 12/31/42

\$ (2,688.19)

Plaintiff's Exhibit No. 6—(Continued)

ROSS B. HAMMOND CO.

PROFIT AND LOSS STATEMENT

December 31, 1942

Schedule A

Income:

Gross Profit on Contracts	
(Sch. A-1 attached)	\$195,807.93
Discount Taken	1,515.57
Total Income	\$197,323.50

Expenses:

Automobile Expense	\$ 1,405.54
Advertising Expense	1,227.78
Depreciation Expense	3,336.26
Entertainment	204.90
General Expense	2,954.86
Insurance Expense	1,863.14
Interest Expense	10,839.72
Maintenance and Repair.....	79.57
Office Expense	4,385.15
Office Salaries	11,492.94
Postage Expense	205.00
Professional Expense	5,763.20
Prospective Contract Expense	111.30
Repairs to Completed Contracts.....	521.13
Stationery and Printing	512.34
Taxes	846.49
Travelling Expense	113.63
Job 211 Expense	987.78
Loss account saw	219.00
Bad Debts	486.40
Warehouse Expense	678.22

Total Expense	\$ 48,234.35
---------------------	--------------

Profit from Contracting Business.....	\$149,089.15
---------------------------------------	--------------

and make payment of the installments of tax shown to be due thereon.

In all cases where an extension of time is granted, interest will be collected at the rate of 6% per annum upon each installment, from the due date for filing to the date of payment.

* * * ° This letter or a copy thereof Must accompany the return when it is filed, as authority for the extension of time herein granted. You are requested to comply strictly with this requirement, because of the added work entailed when the extension letter does not accompany the return when filed, placing an added burden on this office in the present war emergency.

Yours very truly,

GUY T. HELVERING,
Commissioner,

By /s/ J. W. MALONEY,
Collector.

Schedule A—INTEREST AND OWNERSHIP OF TAXABLE GOVERNMENT OBLIGATIONS, ETC. (See Instruction 4)

1. Obligation or securities	2. Amount owned at end of year (see value except for United States savings bonds)	3. Interest
Subject to certain only:		
(1) United States savings bonds (cost price) and Treasury bonds issued prior to March 1, 1941.....	\$.....	\$.....
(2) Less: Wholly tax-exempt portion, principal amount not in excess of \$5,000.....
(3) Net taxable interest.....
(4) Obligations of instrumentality of the United States issued prior to March 1, 1941 (other than Federal land bonds, Federal intermediate credit bonds, or joint stock land bonds).....	\$.....	\$.....
(5) Dividends on share accounts in Federal savings and loan associations in case of shares issued prior to March 28, 1942.....
(6) Subtotal for interest (total of lines 3, 4, and 5).....
(7) Less: Amortizable bond premiums. (See Instruction 14).....
(8) Balance of interest. (Enter as item 4 (a), column 1, page 1).....
Subject to normal tax, surtax, and Victory Tax:		
(1) United States savings bonds issued on or after March 1, 1941 (cost price).....	\$.....	\$.....
(2) Other obligations issued on or after March 1, 1941, by the United States or any instrumentality thereof (include also Treasury notes issued on or after December 1, 1940).....
(3) Subtotal for interest (total of lines 1 and 2). (Enter as item 4 (b), column 2, page 1).....
(4) Less: Amortizable bond premiums. (See Instruction 14).....
(5) Balance of interest. (Enter as item 4 (b), column 1, page 1).....

Schedule B—Schedule B (Form 1040) is a separate sheet and should be used in reporting gains and losses from sales or exchanges of capital assets and property other than capital assets, and filed with and as a part of this return.

Schedule C(1)—INCOME FROM RENTS AND ROYALTIES. (See Instruction 7)

1. Kind of property	2. Amount	3. Depreciation or depletion (explain below)	4. Repairs (explain below)	5. Other expenses (explain below)	6. Net profit (columns 2 through 5) (Enter as line 7, page 1)
.....	\$.....	\$.....	\$.....	\$.....	\$.....
.....

Schedule C(2)—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (See Instruction 8)

(1) nature of business (2) business name

COST OF GOODS SOLD (Do not include where inventories are an income-determining factor)		OTHER BUSINESS DEDUCTIONS	
Inventory at beginning of year.....	\$.....	11. Salaries and wages not included as "Labor" (do not deduct compensation for yourself).....	\$.....
Merchandise bought for sale.....	.....	12. Interest on business indebtedness.....	.....
Labor.....	.....	13. Taxes on business and business property.....	.....
Material and supplies.....	.....	14. Losses (explain below).....	.....
Other costs (explain below).....	.....	15. Bad debts arising from sales or services.....	.....
Total of lines 2 to 6.....	\$.....	16. Depreciation, obsolescence, and depletion (explain below).....	.....
Less inventory at end of year.....	.....	17. Rent, repairs, and other expenses (explain below).....	.....
Net cost of goods sold (line 7 less line 8).....	\$.....	18. Amortization of emergency facilities (attach statement).....	.....
Gross profit (line 1 less line 9).....	\$.....	19. Total of lines 11 to 18.....	\$.....
		20. Total of lines 9 and 19.....	\$.....
		21. Net profit (or loss) (line 1 less line 20). (Enter as line 8, page 1).....	\$.....

EXPLANATION OF DEDUCTIONS FOR DEPRECIATION CLAIMED IN COLUMN 3 AND LINE 16, ABOVE

1. Kind of property (building, auto, equipment, etc.)	2. Date acquired	3. Cost or other basis (do not include land or other nondepreciable property)	4. Average life (depreciated by use at end of year)	5. Depreciation claimed (or allowable) in prior years	6. Depreciation cost or other basis to be recovered	7. Estimated life and its commencing date (beginning of depreciation)	8. Estimated remaining life from beginning of year	9. Depreciation allowable this year
.....	\$.....	\$.....	\$.....	\$.....
.....

EXPLANATION OF DEDUCTIONS CLAIMED IN COLUMNS 4 AND 5 AND LINES 6, 15, AND 17, ABOVE

1. Explanation	2. Amount	1. Column or line No.	2. Explanation	3. Amount
.....	\$.....	\$.....
.....

Schedule C(3)—INCOME FROM PARTNERSHIPS, FIDUCIARIES, AND OTHER SOURCES. (See Instruction 9)

1. Name and address of partnership, syndicate, etc.	2. Amount
Ross B. Edmund Co.	\$132,135.29
.....
.....
.....

See instructions on page 2.

COMPUTATION OF INCOME AND VICTORY TAX. (See Tax Computation Instructions)

Form 4

1. Income Tax net income (from 19, page 1)		\$ 125,662.42
2. Less: Personal exemption (from Schedule E)	\$ 1,200.00	
3. Credit for dependents (from Schedule E)	350.00	1,550.00
4. Balance (surplus net income)		\$ 124,462.42
5. Less: Certain interest on Government obligations (from 4, page 1)		
6. Earned income credit (from Schedule E or 1-10)		1,400.00
7. Balance subject to normal tax		\$ 122,712.42
8. Normal tax (6% of line 7)		\$ 7,362.74
9. Surtax on amount in line 4. (See Surplus Table, page 3 of Instructions)	85,531.54	78,188.80
10. Total Income Tax (line 8 plus line 9). (If Schedule B is used and otherwise per computation made, enter the 14, Schedule B)		\$ 85,531.54
11. Less: Income Tax paid to a foreign country or U. S. possession. (Attach Form 1040)		
12. BALANCE OF INCOME TAX	85,531.54	\$ 85,531.54
13. NET VICTORY TAX (line 6 of Victory Tax Schedule, below)	5,773.10	5,773.10
14. Total of lines 12 and 13	91,324.64	\$ 91,324.64
15. Income Tax paid at source on tax-free government bond interest. (See Footnote 1)		
16. Line 14 less line 15	91,324.64	\$ 91,324.64
17. Income Tax for 1942. (See Statement, Form 1123, from Collector) (First, see page 4 of Instructions)		\$ 95,991.87
18. Enter line 16 or 17 whichever is LARGER. (Members of the armed forces see page 4 of Instructions)		\$ 95,991.87
19. FORGIVENESS FEATURE (Don't fill in (a), (b), and (c) below, if either line 16 or 17 is \$50 or less):		
(a) Enter line 16 or 17, whichever is SMALLER	91,324.64	\$ 91,324.64
(b) Enter 25% or three-fourths of (a), immediately above, whichever is LARGER. This is the FORGIVEN part of the tax		\$ 68,480.36
(c) Enter the UNFORGIVEN part of the tax which is the BALANCE (subtract (b) from (a)). (See Footnote 2)	22,824.14	22,824.14
20. TOTAL INCOME AND VICTORY TAX. (Total of lines 18 and 19 (c))	118,815.65	\$ 118,815.65
21. Less: (a) Income and Victory Tax withheld by employer		
(b) Income Tax paid on 1942 income	17,895.96	
(c) Tax paid on 1943 income on amount of Declaration of Estimated Tax	55,310.76	
(d) Total payments		104,396.70
22. UNPAID BALANCE OF INCOME AND VICTORY TAX. (If line 20 is larger than line 21 (d), enter the difference here and also in Item 28, page 1; if not, see Item 23, page 1)		\$ 14,511.95

FOOTNOTE 1.—If you obtain credits in line 15, disregard lines 10-14 and (b), complete Schedule L-1 on page 4 of Instructions, and enter result in line 10 (c).

FOOTNOTE 2.—If your entire net income for 1942 or 1943 exceeded \$20,000, regarding you to complete Schedule L-2, enter here the amount shown on line 10 or 27 of such schedule, 2.

Schedule K—VICTORY TAX. (See Tax Computation Instructions)

1. Victory Tax net income (from 19, page 1)		\$ 128,086.05
2. Less: Specific exemption (3624 if return reports income of only one person; otherwise, see Instructions, page 3)		624.00
3. Income subject to Victory Tax (line 1 less line 2)		\$ 127,462.05
4. Victory Tax before credit (5% of line 3)		\$ 6,373.10
5. Victory Tax credit:		
(a) Single person, or married person not living with husband or wife: 25% (plus 2% for each dependent) of line 4, but not more than \$500 (plus \$100 for each dependent)		\$
(b) Married person living with husband or wife if separate returns are filed: 40% (plus 2% for each dependent) of line 4, but not more than \$500 (plus \$100 for each dependent)		\$ 600.00
(c) Married person living with husband or wife if only one return or a joint return is filed, or head of a family: 40% (plus 2% for each dependent) of line 4, but not more than \$1,000 (plus \$100 for each dependent). (See Schedule L-2), for exclusion of one dependent by head of a family		\$
6. Net Victory Tax (line 4 less line 5). (Enter in line 13, above)		\$ 5,773.10

Schedule L.—To be used only by individuals whose surplus net income for 1942 or 1943 exceeded \$20,000. Schedule to determine whether Section 6 (c) of the Current Tax Payment Act of 1943 is applicable.

1. Surplus net income for 1942 (from 23, Form 1040 (1942))		\$
2. Surplus net income for 1943 (line 4, above)		\$
3. Surplus net income for base year, \$ plus \$20,000: \$ (Check year used: 1937, 1938, 1939, 1940)		\$

If either line 1 or 2 is greater than line 3, separate Schedule L-2 should be secured from the collector and filed with and as a part of this return.

NOTE.—If a joint return is filed for either 1942 or 1943 and separate returns for the other of such years, enter the aggregate of the separate surplus net incomes for the separate return years. The surplus net income to be entered in line 3 shall be determined in the same manner as the surplus net income entered in line 1 or 2, whichever is the base.

7.4

RANCH PROFIT & LOSS STATEMENT 12/31/43

	Beef Cattle	Dairy Herd & Heifers	Horses	Grain & Hay	Chickens	Total
Inventory 12/31/43						\$ 8,242.05
Sales During year	\$ 255.00	\$3,088.05	\$765.00	\$4,095.00	\$39.00	20,905.10
Total	18,273.45	2,467.40	125.00	39.25	—	29,147.15
	18,528.45	5,555.45	890.00	4,134.25	39.00	
Inventory 1/1/43	16,283.45	4,035.00	640.00	3,415.15	—	24,373.60
Purchases during year	—	165.00	175.00	837.98	39.00	1,216.98
Total	16,283.45	4,200.00	815.00	4,253.13	39.00	25,590.58
Gross Profit	2,245.00	1,355.45	75.00	(118.88)	—	3,556.57
Other Income:						
Milk & Cream Sales						\$7,460.64
Miscellaneous Income						<u>775.40</u>
Total Gross Income						<u>8,236.04</u>
Expenses:						\$11,792.61
Wages						
Repairs						\$7,486.93
Gas, Oil & Tires						1,312.05
Seed & Fertilizers						1,002.43
Feed						439.07
Dairy Supplies						132.88
Miscellaneous Expense						466.26
Meat, Groceries, Board, Outside meals						819.01
Fuel & Light						634.54
Taxes						412.14
Rent						284.22
Insurance						2,167.64
Phone						318.66
Depreciation						302.98
						<u>1,825.54</u>

\$17,604.35

NET LOSS

\$ (5,811.74)

R. B. HAMMOND RANCH

1943 - DEPRECIATION SCHEDULES

Furniture & Household Goods for Help	Date Acquired	Cost	Dep'n Res. 1-1-43	Dep'd Value 1-1-43	Dep'n 1948	Dep'n Res. 12-31-43	Dep'd value 12-31-43
Miscellaneous	1-1-38	500.00	250.00	250.00	50.00	300.00	300.00
Ironer	7-31-38	34.95	15.50	19.45	3.50	19.00	15.95
Second Hand Stove	8-1-38	27.75	13.90	13.85	2.78	16.68	11.07
Washing Machine	8-31-38	30.68	15.35	15.33	3.07	18.42	12.26
2-Chair Seats & Backs	3-31-39	4.00	1.50	2.50	.40	1.90	2.10
Ranch Furniture	9-30-39	40.19	13.06	27.13	4.02	17.08	23.11
Mattress	11-13-39	15.50	4.89	10.61	1.55	6.44	9.06
Ranch Furniture	5-9-40	28.78	15.34	13.44	5.75	21.09	7.69

Total

681.85 329.54 352.31 71.07 400.61 281.24

House 20 Yrs.
Addition 19 Yrs. - 4 Mo.
" 19 Yrs. - 2 Mo.
" 18 Yrs. - 11 Mo.
" 18 Yrs. - 7 Mo.

1-1-38 5,919.31 1,479.85 4,439.46 295.97 1,775.82 4,143.49
9-1-38 47.29 11.02 36.27 2.55 13.57 33.72
10-31-38 45.08 9.91 35.17 2.38 12.29 32.79
2-2-39 50.79 10.50 40.29 2.68 13.18 37.61
5-31-39 86.53 16.70 69.83 4.66 21.36 65.17

Total

6,149.00 1,527.98 4,621.02 308.24 1,836.22 4,312.78

Barn 20 Yrs.

1936 2,630.00 990.50 1,639.50 141.50 1,132.00 1,698.00

Shops-Sheds & Farm Bldgs.

12-1-38 967.04 201.51 765.53 49.35 250.66 716.18

Diary Equipment

7-1-39 360.86 315.77 45.09 45.09 360.86

Power Line

7-1-39 73.28 64.12 9.16 9.16 73.28

R. S. HALLORD - RANCH

1943 - DEPRECIATION SCHEDULES

Machinery & Equipment

Cream Separator
 Wagon In. Wheels and Plow
 Generator - 32 Volt
 Oliver Superior - Grain Drill
 P-20 Tractor and Appliances
 M. C. Daring Soil Pulveriser
 2- Stock Saddles
 1- Used Stock Saddle
 Line Drill
 Wais - Electric Tools
 Hay Fork, Truck & Carriage
 2- Rubber Tired Hay Wagons
 Drag Harrow
 Feed Hog
 Sawyerman #12 Land Leveller
 Manure Spreader
 Ditcher
 Used Gasoline Pump
 J. D. Staecker
 2- J. D. Sweep Rakes
 1940 Dodge Truck
 1939 Plymouth Station Wagon
 1941 - 2 Ton Dodge Truck
 Case Hay Chopper
 Power Mower

Date Acquired	Cost	Dep'n Res. 1-1-43	Dep'd Value 1-1-43	Dep'n 1943	Dep'n Res. 12-31-43	Dep'd Value 12-31-43
1938	68.44	68.44	---	---	68.44	---
3-135	55.00	55.00	---	---	55.00	---
8-135	89.75	89.75	---	---	89.75	---
4-3-36	146.00	146.00	---	---	146.00	---
10-28-37	2,069.90	2,069.90	---	---	2,069.90	---
4-30-38	130.05	121.38	8.67	8.67	130.05	---
8-31-38	121.50	105.30	16.20	16.20	121.50	---
10-3-38	25.00	25.00	---	---	25.00	---
1-20-39	92.50	74.00	18.50	18.50	92.50	---
11-1-38	6.95	7.46	1.49	1.49	8.95	---
7-134	14.70	8.82	5.88	1.47	10.29	4.41
1-20-39	75.00	58.70	16.30	15.00	73.70	1.30
1-20-39	17.00	13.35	3.65	3.40	16.75	.25
1-20-39	51.00	40.10	10.90	10.20	50.30	.70
3-15-39	237.00	179.60	57.40	47.40	227.00	10.00
3-15-39	204.00	154.70	49.30	40.80	195.50	8.50
6-1-41	113.50	35.95	77.55	22.70	58.65	54.85
11-15-39	22.00	13.76	8.24	4.40	18.16	3.84
6-1-41	184.00	58.27	125.73	36.80	95.07	88.93
6-1-41	188.00	59.53	128.47	37.60	97.13	90.87
4-30-40	894.00	596.00	298.00	223.50	819.50	74.50
10-11-40	700.00	393.75	306.25	175.00	568.75	131.25
10-26-40	1,706.00	924.08	781.92	426.50	1,350.58	355.42
1-1-42	480.00	96.00	384.00	96.00	192.00	288.00
9-21-43	266.00	---	266.00	15.50	15.50	244.50

Total

7,953.29 5,394.84

2,558.45

1,201.13

6,595.97

1,357.32

Schedule B (Form 1040)

UNITED STATES

SCHEDULE OF GAINS AND LOSSES FROM SALES OR EXCHANGES OF CAPITAL ASSETS AND PROPERTY OTHER THAN CAPITAL ASSETS

(TO BE FILED WITH THE COLLECTOR OF INTERNAL REVENUE WITH FORM 1040)

For Calendar Year 1943

Or fiscal year beginning, 1943, and ending, 1944

(See instructions on other side)

Name of taxpayer

R. B. HAZMOND

Address

P. O. Box 3901, Portland 8, Oregon

CAPITAL ASSETS

1. Kind of property (If necessary, attach statement of description (don't set down below))	2. Date acquired Mo. Day Year	3. Date sold Mo. Day Year	4. Gross sales price (contract price)	5. Cost or other basis	6. Expense of sale and cost of improvements subsequent to acquisition or March 1, 1913	7. Depreciation allowed (or allowable) since acquisition or March 1, 1913 (attach Schedule)	8. Gain or loss (column 4 plus column 7 less the sum of columns 6 and 5)	9. Gain or loss to be taken into account
--	----------------------------------	------------------------------	---------------------------------------	------------------------	--	---	--	--

SHORT-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD NOT MORE THAN 6 MONTHS

			\$	\$	\$	\$	\$	100
								100
								100
								100

Total net short-term capital gain or loss (enter in line 1, column 2, of summary below)

LONG-TERM CAPITAL GAINS AND LOSSES—ASSETS HELD FOR MORE THAN 6 MONTHS

Property -			\$	\$	\$	\$	\$	50
Ten. 13 R10-12								50
Jefferson City	9/18/42	9/3/43	4,300.00	4,200.00			100.00	50
								50

Total net long-term capital gain or loss (enter in line 2, column 2, of summary below)

SUMMARY OF CAPITAL GAINS AND LOSSES

1. Classification	2. Net gain or loss to be taken into account from column 10, above		3. Net gain or loss to be taken into account from partnerships and common trust funds		4. Total net gain or loss taken into account on columns 2 and 3 of this summary	
	(a) Gain	(b) Loss	(a) Gain	(b) Loss	(a) Gain	(b) Loss
1. Total net short-term capital gain or loss	\$	\$	\$	\$	\$	\$
2. Total net long-term capital gain or loss	\$ 50.00	\$	\$	\$	\$ 50.00	\$
3. Capital loss carry-over (attach statement)						
4. Net gain in column 4, lines 1, 2, and 3. (Enter as item 6 (a), page 1, Form 1040)					\$ 50.00	
5. Net loss in column 4, lines 1, 2, and 3. (The amount to be entered as item 6 (a), page 1, Form 1040, is (1) this item or (2) net income, computed without regard to capital gains or losses, or (3) \$1,000, whichever is smallest)						

COMPUTATION OF ALTERNATIVE TAX

Use only if you had an excess of net long-term capital gain over net short-term capital loss, and line 4, page 4, Form 1040, exceeds \$18,000

1. Net income (item 18, page 1, Form 1040)	\$125,662.40	10. Normal tax (6% of line 9)	\$ 7,359.74
2. Excess of net long-term capital gain over net short-term capital loss (line 2, column 4 (a), less the sum of line 1, column 4 (b), and line 3 of summary above)	50.00	11. Surtax on line 6. (See Surtax Table in Form 1040 Instructions)	78,149.30
3. Ordinary net income (line 1 less line 2)	\$125,612.40	12. Partial tax (line 10 plus line 11)	\$ 85,509.04
4. Less: Personal exemption. (From Schedule 1-(1), Form 1040)	\$ 1,200.00	13. 50% of line 2	25.00
5. Credit for dependents. (From Schedule 1-(2), Form 1040)	350.00	14. Alternative tax (line 12 plus line 13)	\$ 85,534.04
6. Balance (surtax net income)	\$124,062.40	15. Total normal tax and surtax (line 8 plus line 9, page 4 of Form 1040)	\$ 85,551.54
7. Less: Item 4 (a), page 1, Form 1040	\$	16. Tax liability (line 14 or line 15, whichever is the lesser). (Enter as line 10, page 4, Form 1040)	\$ 85,534.04
8. Earned income credit. (From Schedule J-(1) or J-(2), Form 1040)	1,400.00		
9. Balance subject to normal tax	\$122,662.40		

PROPERTY OTHER THAN CAPITAL ASSETS

1. Kind of property	2. Date acquired	3. Gross sales price (contract price)	4. Cost or other basis	5. Expense of sale and cost of improvements subsequent to acquisition or March 1, 1913	6. Depreciation allowed (or allowable) since acquisition or March 1, 1913 (attach Schedule)	7. Gain or loss (column 3 plus column 6 less the sum of columns 4 and 5)
		\$	\$	\$	\$	\$

Total net gain (or loss) (enter as item 6 (b), page 1)

State the family, fiduciary, or business relationship to you, if any, of purchaser of any of the items on this page

If any of such items were acquired by you other than by purchase, explain fully how acquired

Plaintiff's Exhibit No. 6—(Continued)
Treasury Department
Internal Revenue Service
Portland, Oregon

[Stamp]: Received May 15, 1944.

IT:RPK:E

March 8, 1944

Mr. R. B. Hammond
c/o P. O. Box 3901
Portland 8, Oregon

Dear Sir:

Receipt is acknowledged of your application of recent date, requesting for the reasons therein stated, an extension of time within which to file your return of income for the year 1943.

An extension of time to May 15, 1944 is hereby granted, within which to file the return in question and make payment of the amount due March 15, 1944, as shown by the return.

In all cases where an extension of time is granted, interest will be collected at the rate of 6% per annum, on the amount due as of March 15, 1944, to date of payment.

This letter or a copy thereof Must accompany the return when it is filed, as evidence of the extension of time herein granted, in order that the return may not be listed as delinquent.

Yours very truly,

JOSEPH D. NUNAN, JR.,
Commissioner,

By /s/ J. W. MALONEY,
Collector.

Plaintiff's Exhibit No. 6—(Continued)

Statement of Tax Liability and Payments on
Account of Individual Income Tax
Return for 1942

To Federal Income Taxpayer named below: For the purpose of assisting you in the preparation of your 1943 income tax return, there is shown hereon certain information taken from the records of this office pertaining to your Federal income tax account for the taxable year 1942. This information must be entered on your 1943 return, and this Statement should be attached to the return in support of the entries. *Do not make any changes in this Statement.* If the figures do not agree with your records, return the Statement *at once* with a letter of explanation

Collector of Internal Revenue,
Portland, Oregon

241169

Ross B. Hammond
PO Box 3901
1241 N. Williams Ave.
Portland, Oregon

Total tax shown on your 1942 income tax return: \$95,991.87. Paid at time of filing and as result of bills subsequently issued: \$47,995.94.

This statement should be attached to your 1943 income tax return when filed with Collector of Internal Revenue.

PLAINTIFF'S EXHIBIT No. 12

[Red Pencil]: 1938
Treasury Department
Internal Revenue Service

Seattle, Washington, February 3, 1940

Seattle Division

[Stamp]: Received, Ross B. Hammond Co., Feb.
5, 1940.

[Stamp]: Paid Tax, \$291.56; Int., \$16.08; To-
tal, \$307.64. 2/22/40. No. 4891.

No. 15059-O

Ross B. Hammond,
1214 Spalding Bldg., Portland, Oregon.

In re: Income tax

Date of Report: January 24, 1940

Year(s) Examined: 1938

Sir:

There is enclosed for your information and files a copy of a report covering the examination of your income tax return(s) for the year(s) indicated, recently made by a representative of this office. You have indicated your agreement to the adjustment of tax liability shown in the report.

The item checked below explains briefly how settlement of the agreed tax liability will be accomplished through the office of the Collector of Internal Revenue for your district.

Respectfully,

/s/ GEO. C. EARLEY,

Internal Revenue Agent in Charge.

Enclosure.

Plaintiff's Exhibit No. 12—(Continued)

Deficiency: The Collector will present to you at an early date a bill for payment of the tax, together with interest, at which time remittance should be made to that official, provided you have not already paid the full amount due.

* * *

January 24, 1940.

Name of taxpayer, Ross B. Hammond.

Statement of Total Tax Liability

Income Tax, Year, 1938; Tax Previously Assessed, \$1,209.15; Adjustments Proposed in This Report, Deficiency: \$291.56; Correct Tax Liability: \$1,500.71.

* * *

Note.—The amount shown in the first column of the above statement is the amount assessed on the original return, except as indicated in the following summary of adjustments previously made.

* * *

Preliminary Statement

Additional tax was principally caused by taxpayer understating farm inventory and error in accrual of interest.

Findings were explained to the taxpayer who has agreed thereto.

Taxpayer was a married man living with his wife during the entire year. Wife had no separate income and did not file a return. Taxpayer was

Plaintiff's Exhibit No. 12—(Continued)

sole support during the year of his aged father, as a dependent. See affidavit attached to the return in this connection.

Schedule No. 1

Block Adjustments—1938

	Return	Additions	Deductions	Amended
3. Interest	1,594.36		(a) 1,431.70	162.66
5. Interest	387.50			387.50
6. Loss on ranch	(4,792.24)	1,699.00	160.00	(3,253.24)
8. Discounts	3,512.03		(a) 3,512.03	
		608.51		
9. Business	19,854.71	3,085.10	(a)	23,548.32
10a. Short term gain	1,743.75			1,743.75
11. Other	15.00		(a) 15.00	
12. Total	22,315.11			22,588.99
13. Contributions	275.00			
14. Interest	2,688.70	1,301.54		275.00
15. Taxes	1,831.90	572.09	(a)	1,387.16
			(a)	1,259.81
19. Total deductions	4,795.60			2,921.97
20. Net income	17,519.51	7,266.24	5,118.73	19,667.02

Schedule 1-A

Explanation of Items

(a) Items designated (a) in Schedule 1 relate to the taxpayer's contracting business and have been transferred to line 9 of Schedule 1 accordingly, viz:

Plaintiff's Exhibit No. 12—(Continued)

Interest	\$1,431.70	
Discount taken	3,512.03	
Rent equipment	15.00	
Interest expense	\$1,301.54	
Taxes	572.09	
Net adjustment, line 9.....	(3,085.10)	
		<hr/>
	\$4,958.73	\$4,958.73

These transfers do not affect net income on line 20, Schedule 1, as the above computation shows.

Line 6, Schedule No. 1

\$1,699.00	Adjustment to increase farm inventory as at December 31, 1938. See further explanation in Exhibit C.	
160.00	Adjustment to increase purchases, viz:	
	Purchases per line 5, page 2, Form 1040F.....	\$107.95
	As corrected	267.95
		<hr/>
	Difference	\$160.00

Difference represents the cost of a team of work horses purchased in 1938 and included in the closing inventory, as amended.

Line 9, Schedule No. 1

\$608.51	—Accrued interest on Federal Income Tax deficiencies for years 1934, 1936 and 1937.	
	Per books (interest accrued for 1938 only).....	\$1,237.83
	Corrected	629.32
		<hr/>
	Difference	\$ 608.51

Plaintiff's Exhibit No. 12—(Continued)

Schedule No. 2

Computation of Tax

1. Net income (from Schedule 1).....	\$19,667.02
2. Less: Personal exemption	\$2,500.00
3. Credit for dependents.....	400.00 2,900.00
4. Balance (surtax net income).....	16,767.02
5. Less: Interest on U. S. Treasury Bonds..\$	387.50
6. Earned income credit (see below).....	470.97 858.47
7. Balance subject to normal tax.....	15,908.55
8. Normal tax at 4%	\$ 636.34
9. Surtax on item 4.....	864.37
10. Total tax	1,500.71
13. Total tax assessable	1,500.71
14. Tax previously assessed	1,209.15
15. Additional tax to be assessed.....	291.56

Computation of Earned Income Credit

Schedule 1, Line 9—Profit \$23,548.32

\$23,548.32 at 20% equals earned income or.....	\$4,709.66
10% of \$4,076.34 equals.....	470.97

Plaintiff's Exhibit No. 12—(Continued)

EXHIBIT A

Balance Sheet Contracting Business as at 12-31-38

Assets:	Books	Dr.	Cr.	Amended
Cash.....	4,082.45	No Change		
Accts. Rec.....	22,816.44	“		
State capital.....	836.25	“		
U. of Ore. Med. School				
Library.....	1,054.74	“		
Deposits.....	175.00	“		
Accts. Rec. M.				
Knudsen Co.....	1,227.48	“		
Prepaid Expense.....	622.70	“		
Material & Supplies.....	1,427.23	“		
Fixed Assets:				
Autos.....	2,938.00	“		
Furniture & Fixtures.....	4,100.74	“		
Machinery & Equipment...	50,100.28	“		
Totals.....	89,381.31			89,381.31
Liabilities:				
Accounts Payable.....	8,453.55	“		8,453.55
Accrued Payroll.....	213.84	“		213.84
Accrued taxes.....	187.41	“		187.41
Bonus Payable (1936).....	18,000.00	“		18,000.00
Reserve for add'l. Inc.				
tax assessment.....	21,009.55	10,520.83 (a)		10,488.72
Accrued Int. on def.....	2,598.84	1,136.61 (a)		1,462.23
Reserve for Deprn.				
Autos.....	1,008.35			1,008.35
Furn. & Fixt.....	3,178.05			3,178.05
Mach. & Equip.....	47,641.36			47,641.36
Net Worth				
R. B. Hammond.....	(12,909.64)	(b) 11,657.44		(1,252.20)
Totals.....	89,381.31	11,657.44	11,657.44	89,381.31

Plaintiff's Exhibit No. 12—(Continued)

Federal income tax deficiencies of predecessor R. B. Hammond, Inc., as finally determined. See Conference Revision Report on taxpayer for 1937, dated September 1, 1939. Adjustment to bring into agreement therewith.

Year 1934	\$3,745.54		
1936	4,327.05	Accrued Int.	Accrued Int.
1937	2,416.13	1938	12/31/38
	<hr/>		
	10,488.72		
Accrued Interest thereon			
to 12-31-37	\$ 832.91	629.32	1,462.23
	<hr/>		
Total per Conf. Rpt.....	\$11,321.63		
(b) Net adjustment to surplus.			

EXHIBIT B

Net Worth—Contracting Business

As per Books:	Dr.	Cr.	Balance
12-31-37 balance (Corp. capital & surplus trans.).....		43,114.51	43,114.51
1938			
R. B. Hammond Acct. transf.....	8,101.40		
Notes Rec. Transferred.....	1.00		
Stock & Bonds Transferred.....	13,940.70		
Adj. Morrison Knudsen Co. Acct.....	411.35		20,660.06
Net profit—Sch. D of return.....		19,854.71	
a) Items income & deduction reported elsewhere on return 1938:			
Discount taken		3,512.03(a)	
Interest		1,431.70(a)	

Plaintiff's Exhibit No. 12—(Continued)

Exhibit B—(Continued):

As per Books:	Dr.	Cr.	Balance
Profit on sale U. S. Treas. Bonds			
line 10(a)		1,743.75(a)	
Rent of equipment Line 11.....		15.00(a)	
Contributions Line 13.....	235.00(a)		
Interest—Line 14	1,301.54(a)		
Taxes—Line 15	572.09(a)		
Part of 1937 Fed. I. T. on Corp. Accr.....	1,819.21		
Withdrawals R. B. Hammond.....	56,199.05		
12-31-38 Balance		(12,909.64)	(12,909.64)
	<hr/>	<hr/>	
Totals.....	82,581.34	82,581.34	
	<hr/>	<hr/>	
Amended:			
12-31-37 Bal. (See Conf. Rev. Rpt.			
dated 9-1-39)		44,251.14	44,251.14
1938			
R. B. Hammond Acct. Rec. Transferred	8,101.40		
Notes Receivable Transferred	1.00		
Stocks & Bonds Trans.....	4,663.00		
Books \$13,940.70			
Adj. 9,277.70(a)			
	<hr/>		
Net Profit, Sch. No. 1.....		23,548.32	
Gain on sale Treas. Bds. Line (10a)			
Sch. 1		1,743.75	
Contributions incl. line 13 Sch. 1.....	235.00		
Withdrawals	56,199.05		
R. B. Hammond, Inc. Fed. IT 1933			
deficiency	1,300.17		
Interest on deficiency to 12-31-37.....	295.79		
12-31-38 balance		(1,252.20)	(1,252.20)
	<hr/>	<hr/>	
Totals.....	70,795.41	70,795.41	

(a) See 1937 R.A.R. and Conference revision report dated 9-1-39 showing adjustment of values upon liquidation of the corporation. Taxpayer, as sole stockholder, liquidated the corporation of Ross B. Hammond, Inc., as at 12-31-37.

Plaintiff's Exhibit No. 12—(Continued)

EXHIBIT C

Farm Inventory as of 12-31-38

6200 lbs. Clover seed at 10c.....	\$ 620.00
14 pigs at \$6.00	84.00
Dairy Cows:	
Z 536792 Bonny, 5 years	80.00
536795 Cherry, 5 years	35.00
536788 Shorty, 12 years	35.00
536794 Opal, 5 years	35.00
536789 June, 4 years	50.00
536797 Peggy, 5 years	35.00
536793 July, 4 years	35.00
536798 Pearl, 3 years	70.00
Mary, 3 years	35.00
591557 ———, 2 years	30.00
527125 ———, 2 years	30.00
52726 ———, 2 years	30.00
591558 ———, 2 years	30.00
591556 ———, 2 years	30.00
One calf, 6 months	25.00
X 405447 ———, 3 years	50.00
One steer, 1 year	40.00
Work Horses:	
Buck, 12 years	25.00
Tony, 6 years	60.00
Chief, 6 years	60.00
Junior, 7 years	50.00
Pard, 7 years	30.00
Lady, 3 years	30.00
Strawberry, 5 years	30.00
Star, 2½ years	50.00
Jack, 2½ years	30.00
Barley—4 tons at \$25.00	100.00
Oats—1 ton at \$25.00	25.00
Hay—45 tons at \$12.00	540.00
<hr/>	
Total Inventory 12-31-38	\$2,409.00
Per Form 1040 F	710.00
<hr/>	
Difference—income increased	\$1,699.00

PLAINTIFF'S EXHIBIT No. 13

1938

Treasury Department
Internal Revenue Service

Seattle, Washington,
March 19, 1941.

Seattle Division

Mr. Ross B. Hammond
1214 Spalding Building
Portland, Oregon

In re: Income tax

Date of Report: Jan. 27, 1941

Year Examined: 1938

There is enclosed for your information and files a copy of a report covering the examination of your income tax return(s) for the year(s) indicated, recently made by a representative of this office. You have indicated your agreement to the adjustment of tax liability shown in the report.

The item checked below explains briefly how settlement of the agreed tax liability will be accomplished through the office of the Collector of Internal Revenue for your district.

Respectfully,

/s/ GEO. C. EARLEY,

Internal Revenue Agent in
Charge.

DLA/ac

Enclosure.

Plaintiff's Exhibit No. 13—(Continued)

Deficiency: The Collector will present to you at an early date a bill for payment of the tax, together with interest, at which time remittance should be made to that official, provided you have not already paid the full amount due.

* * *

SUPPLEMENTAL REPORT

Name of taxpayer, Ross B. Hammond.

Date of Report: Jan. 27, 1941.

Statement of Total Tax Liability

Income Tax, Year: 1938; Tax Previously Assessed, \$1,500.71; Adjustments Proposed in This Report, Deficiency: \$157.78; Correct Tax Liability: \$1,658.49.

* * *

Note.—The amount shown in the first column of the above statement is the amount assessed on the original return, except as indicated in the following summary of adjustments previously made.

Year 1938—Income Tax

Original tax.....	\$1,209.15
Deficiency assessed, 1940.....	291.56

Net Tax Previously Assessed..\$1,500.71

Preliminary Statement

The causes of the additional tax were taxpayer's erroneous deductions for interest and club dues.

Changes were discussed with Mr. Hammond, who has executed Form No. 870 agreeing to the additional tax as shown by this report.

Plaintiff's Exhibit No. 13—(Continued)

Schedule 1

Year Ended: 12/31/38

Adjustments to Net Income

Net income as disclosed by Revenue Agent's Report	
1/24/40	\$19,667.02
As corrected	20,617.14
Net adjustment as computed below.....	950.12
Unallowable deductions and additional income:	
(a) Accrued interests	\$629.32
(b) Club dues not allowable.....	320.80
Total	\$ 950.12
Net adjustment	\$ 950.12

Schedule 1-A

Explanation of Items

- (a) Accrued interest unallowable, \$629.32. When Ross B. Hammond Company, a corporation, was dissolved in 1937, there were outstanding against it Federal income tax assessments for several years. These assessments were in dispute and final settlement was made in 1939 at which time this taxpayer, as transferee, paid the additional tax and interest. In a previous report there was allowed as a deduction \$629.32 as interest which accrued on these taxes for the year 1938. It is now held that interest paid by a transferee on deficiency of a dissolved corporation is not an allowable deduction. See I.T. 3156 C.B. 1938-1 Page 213: Also, Appeal of Ben P. O'Niel 18 B.S.A. 1036.

Plaintiff's Exhibit No. 13—(Continued)

- (b) Club dues not allowable, \$320.80. Taxpayer is a member of a local club known as the Arlington Club. At various times he has used this club for the purpose of entertaining prospective customers. This club is primarily a social club and the greater portion of the expense connected therewith is of a personal nature. However, a portion of the expense is applicable to business and it has been estimated that an allocation of $\frac{1}{3}$ is a fair allowance for business. Adjustment has been made as follows:

Total dues and expenses	\$494.40
Less: Taxes on dues allowable in full.....	13.20
<hr/>	
Balance	\$481.20
Allocated to business $\frac{1}{3}$	160.40
Allocated to personal $\frac{2}{3}$	320.80

Schedule 2—Year ended Dec. 31, 1938

Computation of Tax

1. Net in come from Schedule 1.....	\$20,617.14
2. Less: Personal exemption	\$2,500.00
3. Credit for dependents	400.00 2,900.00
<hr/>	
4. Balance	\$17,717.14
6. Less: Earned income credit	477.38
<hr/>	
7. Balance subject to normal tax.....	\$17,239.76
8. Normal tax at 4%	\$ 689.60
9. Surtax on item at 4%.....	968.89
13. Total tax assessable	\$ 1,658.49
14. Tax previously assessed	1,500.71
15. Additional tax to be assessed	157.78

Plaintiff's Exhibit No. 13—(Continued)

Computation of Earned Income Credit:

Business income per Revenue Agent's report 1/24/40.....	\$23,548.32
Add: Club dues not allowable	320.80
Business income amended	23,869.12
<hr/>	
Earned income 20% x 23869.12	\$ 4,773.82
Earned income credit 10% x 4771.82.....	477.38

PLAINTIFF'S EXHIBIT No. 14

Treasury Department
Internal Revenue Service

Seattle, Washington,
March 19, 1941.

Seattle Division

[Penciled]: Overassessment, 3/9/43, \$132.59.

Mr. Ross B. Hammond
1214 Spalding Building
Portland, Oregon

In re: Income Tax

Date of Report: Jan. 27, 1941

Year Examined: 1939

Sir:

There is enclosed for your information and files a copy of a report covering the examination of your income tax return(s) for the year(s) indicated, recently made by a representative of this office. You have indicated your agreement to the adjustment of tax liability shown in the report.

The item checked below explains briefly how settlement of the agreed tax liability will be accom-

Plaintiff's Exhibit No. 14—(Continued)

plished through the office of the Collector of Internal Revenue for your district.

Respectfully,

/s/ GEO. C. EARLEY,

Internal Revenue Agent in Charge.

DLA/ac. Enclosure.

Deficiency: The Collector will present to you at an early date a bill for payment of the tax, together with interest, at which time remittance should be made to that official, provided you have not already paid the full amount due.

* * *

Name of taxpayer, Ross B. Hammond.

Dated of Report: Jan. 27, 1941.

Statement of Total Tax Liability

Income Tax, Year: 1939; Tax Previously Assessed: \$3,080.51; Adjustments Proposed in This Report, Deficiency: \$1,497.61; Correct Tax Liability: \$4,578.12.

* * *

Note.—The amount shown in the first column of the above statement is the amount assessed on the original return, except as indicated in the following summary of adjustments previously made.

Preliminary Statement

The principal cause of the additional tax was overstatement of cost of one contract.

Plaintiff's Exhibit No. 14—(Continued)

Changes were discussed with Mr. Hammond, who has executed Form No. 870 agreeing to the immediate assessment of the deficiency as shown.

Taxpayer was a married man living with his wife all during the year 1939. He is the sole support of his father who is past 83 years of age. This dependent makes his home with the taxpayer.

Schedule 1—Year: 1939

Block Adjustments

	Return	Add. to Income	Corrected
2. Dividends	\$ 206.00		\$ 206.00
3. Interest	262.09	(b) \$ 60.00	322.09
6. Farm Loss	(9,521.95)		(9,521.95)
9. Business	38,542.88	(a) 6,543.97	45,086.85
11. Other income	63.82		63.82
12. Total Income	29,552.84		36,156.81
13. Contributions	294.00		294.00
14. Interest	663.87		663.87
15. Taxes	498.08		498.08
19. Total deductions	1,455.95		1,455.95
22. Net Income	28,096.89	6,603.97	34,700.86

Schedule 1-A

Explanation of Items

(a) Line No. 9, Business Income increased as follows:

- (1) Cost of Job No. 196 overstated..\$5,000.00
- (2) Interest deduction not allowable.. 1,227.07
- (3) Club dues not allowable..... 316.90

Total increase\$6,543.97

(1) Cost of Job No. 196 overstated, \$5,000.00.
Amount accrued on books as a contingent lia-

Plaintiff's Exhibit No. 14—(Continued)

bility and charged to cost of Job No. 196. This accrued was made to cover estimated cost of bricks which were placed in 1939 but which were bleeding badly. It appeared as though these bricks would have to be replaced, but subsequent events proved that several washings were sufficient. Cost of washings were paid by brick manufacturer. Taxpayer has reported the gain on this contract on the percentage of completion basis and the deductions are limited to amounts actually expended on the job. See Section 19.42-4 of Internal Revenue Code.

- (2) Interest deduction not allowable, \$1,227.07. When the Ross B. Hammond Company, a corporation, was dissolved in 1937, there were outstanding against it Federal income tax assessments for several years. These assessments were in dispute but were finally settled in the year 1939. This taxpayer, as transferee of the assets of the corporation, paid the additional tax including interest in the amount of \$1,856.39. Deduction was claimed for \$1,227.07 of this amount computed as follows:

Interest paid	\$1,856.39
Accrued in 1938.....	629.32
Balance	\$1,227.07

It has been held that interest paid by a transferee on deficiency of a dissolved corporation is not an allowable deduction to the individual.

Plaintiff's Exhibit No. 14—(Continued)

See L.T. 3156 C.B. 1938-8 page 213. Also the appeal of Ben P. O'Niel 18 B.S.A. 1036.

- (3) Club dues not allowable, \$316.90. Taxpayer is a member of a local club known as the Arlington Club. At various times he has used this club for the purpose of entertaining prospective customers. This club is primarily a social club and the greater portion of the expense connected therewith is of a personal nature. No segregation was made by the taxpayer between the portion allowable for business purposes and the portion attributable to his personal expense. It has been estimated that $\frac{1}{3}$ is a fair allocation of the portion allowable for business and adjustment has been made as follows:

Total Arlington Club expense including dues.....	\$488.55
Deduct taxes on dues allowable in full	13.20
Balance	<u>\$475.35</u>
Portion allocated to business $\frac{1}{3}$	158.45
Portion allocated in personal $\frac{2}{3}$	316.90
(b) Interest income increased	\$ 60.00
Interest on Oregon Pulp & Paper Company bonds received by Mr. Hammond and not included in interest shown on return.	

Schedule 2—Year: 1939

Computation of Tax

1. Net income from Schedule 1.....	\$34,700.86
2. Less: Personal exemption	\$2,500.00
3. Credit for dependents	400.00 2,900.00

Plaintiff's Exhibit No. 14—(Continued)

4. Balance	\$31,800.86
6. Less: Earned income credit	901.74
<hr/>	
7. Balance subject to normal tax.....	\$30,899.12
8. Normal tax at 4%.....	\$1,235.96
9. Surtax on Item 4.....	3,342.16
13. Total tax assessable	4,578.12
14. Tax previously assessed	3,080.51
15. Additional tax to be assessed.....	1,497.61
<hr/>	
Computation of Earned Income Credit:	
Business income	\$45,086.85
Earned income 20%	9,017.37
Earned income credit 10%	901.74

PLAINTIFF'S EXHIBIT No. 15

Treasury Department
Internal Revenue Service

Seattle, Washington, March 23, 1943

Seattle Division

[Stamp]: Ross B. Hammond Co., Received Mar.
25, 1943.

Mr. Ross B. Hammond
1214 Spalding Building
Portland, Oregon

In re: Income Tax
Date of Report: March 1, 1943
Year(s) Examined: 1939

Sir:

There is enclosed for your information and files a copy of a report covering the examination of your income tax return(s) for the year(s) indicated, recently made by a representative of this office. You have indicated your agreement to the adjustment of tax liability shown in the report.

Plaintiff's Exhibit No. 15—(Continued)

The item checked below explains briefly how settlement of the agreed tax liability will be accomplished through the office of the Collector of Internal Revenue for your district.

Respectfully,

/s/ A. R. STOCKTON,

Internal Revenue Agent in Charge.

Enclosure.

* * *

Overassessment: After the overassessment(s) have been certified to the Collector by the Commissioner of Internal Revenue, you will receive a check in payment of the overassessment and interest, provided there are no outstanding taxes against which the amount should be credited.

Name of Taxpayer, Ross B. Hammond.

Date of Report, 3/1, 1943.

Examining Officer, Keith L. Leslie.

Index:

Statement of Total Tax Liability

Year: 1939; Liability, Tax: \$4,445.53; Previously Assessed*, Tax: \$4,578.12; Adjustments Proposed in This Report, Tax, Overassessment: \$132.59.

*Summary of Adjustments of Assessments

Year 1939—Income Tax

Originally assessed\$3,080.51

Deficiency assessed March, 1941.. 1,497.61

Net previous assessments....\$4,578.12

* * *

Plaintiff's Exhibit No. 15—(Continued)

Preliminary Statement

The cause of overassessment for the year 1939 was the assessment by the State of Oregon of additional state taxes for that period, payment of which was made in 1941.

Through the taxpayer's bookkeeper, R. Novak, he was advised to protect his interests by filing a claim for refund prior to the expiration of the statute of limitations on March 15, 1943.

Agreement Form 873 was executed by the taxpayer.

Schedule 1—1939

Block Adjustments

	R.A.R. 1/27/41	Deductions from income	Corrected
1. Dividends.....	\$ 206.00		
2. Interest.....	322.09		
4. Farm loss.....	(9,521.95)		
6. Business income.....	45,086.85		No change
8. Other income.....	63.82		
10.	<hr/> \$36,156.81		<hr/> \$36,156.81
12. Contributions.....	\$ 294.00		\$ 294.00
13. Interest.....	663.87		663.87
14. Taxes.....	498.08	576.51	1,074.59
16.	<hr/> \$ 1,455.95		<hr/> \$ 2,032.46
17.	34,700.86	576.51	34,124.35

Plaintiff's Exhibit No. 15—(Continued)

Schedule 1-A

Explanation of Items

(14) Taxes:

Additional tax for 1939 was assessed by the State of Oregon, caused through a redistribution of income and expense proratable to business done within and without the State of Oregon for that period. The tax was paid in 1941.

Schedule 2—Year Ended 12/31/39

Computation of Tax

Net income, from Schedule 1	\$34,124.35
Less: Personal exemption	\$2,500.00
Credit for dependents	400.00 2,900.00
Balance (surtax net income).....	\$31,224.35
Less: Earned income credit	\$ 901.74 901.74
Balance subject to normal tax.....	\$30,322.61
Normal tax at 4%	\$1,212.90
Surtax on \$31,224.35.....	3,232.63
Total tax	4,445.53
Total tax assessable	\$ 4,445.53
Tax previously assessed	4,578.12
Overassessment	\$ 132.59

PLAINTIFF'S EXHIBIT No. 16

No. 15059-O

Treasury Department
Internal Revenue Service

[Printer's Note]: (Pencil Notation): Overassessment 3/9/43, \$163.54.

Seattle, Washington, June 25, 1941

[Stamp]: Ross B. Hammond Co., Received June 26, 1941.

[Stamp]: Paid, Clerk No. 5483. Date 7/11/41.

Seattle Division

Mr. Ross B. Hammond,
1214 Spalding Bldg.,
Portland, Oregon.

In re: Income Tax

Date of Report: June 12, 1941

Year Examined: 1940

Sir:

There is enclosed for your information and files a copy of a report covering the examination of your income tax return for the year indicated, recently made by a representative of this office. You have indicated your agreement to the adjustment of tax liability shown in the report.

The item checked below explains briefly how settlement of the agreed tax liability will be accomplished through the office of the Collector of Internal Revenue for your district.

Respectfully,

/s/ GEO. C. EARLEY,

Internal Revenue Agent in

ENH:AJB

Charge.

Enclosure.

Plaintiff's Exhibit No. 16—(Continued)

Deficiency: The Collector will present to you at an early date a bill for payment of the tax, together with interest, at which time remittance should be made to that official, provided you have not already paid the full amount due.

* * *

Name of taxpayer, Ross B. Hammond.

Date of report, June 12, 1941.

Statement of Total Tax Liability

Income Tax, Year: 1940; Tax Previously Assessed: \$6,534.29; Adjustments Proposed in This Report, Deficiency: \$16.50; Correct Tax Liability, \$6,550.79.

Note.—The amount shown in the first column of the above statement is the amount assessed on the original return, except as indicated in the following summary of adjustments previously made.

* * *

Preliminary Statement

Year 1940

The cause of the additional tax was the claiming of cost of common stock that became worthless in 1934.

The findings have been explained to Mr. Ross B. Hammond, who has signed agreement form 870 herewith.

Plaintiff's Exhibit No. 16—(Continued)

Taxpayer was married and living with wife during the entire taxable year. Taxpayer provided the entire support of his 84-year-old father.

Schedule 1—Year 1940

Block Adjustments

	Return	Additions to Income	Corrected
3. Interest.....	\$ 386.15		\$ 386.15
6. Ranch loss.....	(10,945.87)		(10,945.87)
9. Business.....	47,685.22		47,685.22
10(b). Long term loss.....	(115.00)	50.00	(65.00)
10(c). Loss on sale of equipment.....	(936.90)		(936.90)
12. Total.....	\$36,073.60		\$36,123.60
13. Contributions.....	381.00		381.00
14. Interest.....	513.22		513.22
15. Taxes.....	2,385.83		2,385.83
19.	\$ 3,280.05		\$ 3,280.05
22. Net income	\$ 32,793.55	50.00	\$32,843.55

Schedule 1-A—Year 1940

Explanation of Items

Line 10(b) Net long-term loss decreased . . . \$50.00

Taxpayer purchased capital stock of the Eastmoreland Company in 1929 as follows:

5 Shares of preferred \$250.00

1 Share of common 100.00

Total \$350.00

Plaintiff's Exhibit No. 16—(Continued)

During the year 1934 the bondholders foreclosed on the properties of that corporation, leaving the common stock worthless and a nominal amount to apply on preferred stock.

Taxpayer has received liquidating payments on his preferred stock, the final having been received in 1940. Inasmuch as the common stock became worthless in 1934, its cost is not to be considered in the final liquidation.

Cost of preferred stock 1929.....	\$250.00
Liquidation in 1937	\$75.00
Liquidation in March 1940.....	45.00 120.00
<hr/>	
Loss	\$130.00
50% allowable	65.00

Schedule 2—Year Ended Dec. 31, 1940

Computation of Tax—Internal Revenue Code

1. Net income (from Schedule 1).....	\$32,843.55
2. Less: Personal exemption	\$2,000.00
3. Credit for dependents	400.00 2,400.00
<hr/>	
4. Balance (surtax net income).....	\$30,443.55
5. Less: Earned income credit.....	953.70
<hr/>	
Balance subject to normal tax.....	\$29,489.85
8. Normal tax at 4%	\$1,179.59
9. Surtax	4,773.07
<hr/>	
10(a). Total tax	\$ 5,952.66
10(b). Total tax (alternative tax in case of a net long-term gain or loss) (from Schedule 2-A).....	5,955.26
11. Defense tax (10% of above).....	595.53
12. Total income and defense taxes.....	6,550.79
15. Total tax assessable	6,550.79
16. Tax previously assessed	6,534.29
17. Additional tax to be assessed.....	16.50

Plaintiff's Exhibit No. 16—(Continued)

Schedule 2-A—Year 1940

Alternative Tax Computation

1. Net income, Schedule 1	\$32,843.55
2(b). Add: Long term loss	65.00
3. Ordinary net income	32,908.55
4. Less: Personal exemption	\$2,000.00
5. Credit for dependent	400.00 2,400.00
<hr/>	
6. Surtax net income	\$30,508.55
8. Earned income credit	953.70
9. Normal tax net income.....	29,554.85
Normal tax at 4%	\$ 1,182.19
Surtax on 6 above	4,792.57
Partial tax	5,974.76
30% of 2(b) above	19.50
Alternative tax	5,955.26
Total tax, line 10(a), Schedule 2.....	5,952.66
Tax liability	\$ 5,955.26

PLAINTIFF'S EXHIBIT No. 17

Treasury Department
Internal Revenue Service

Seattle, Washington, March 23, 1943

[Stamp]: Ross B. Hammond Co., Received Mar.
25, 1943.

Seattle Division

Mr. Ross B. Hammond

1214 Spalding Bldg., Portland, Ore.

In re: Income Tax

Date of Report: March 1, 1943

Year(s) Examined: 1940

Sir:

There is enclosed for your information and files
a copy of a report covering the examination of

Plaintiff's Exhibit No. 17—(Continued)

Schedule 2—Year ended 12/31/40

Computation of Tax

Net income, from Schedule 1	\$32,406.30
Less: Personal exemption	\$2,000.00
Credit for dependents	400.00 2,400.00
Balance (surtax net income)	\$30,006.30
Less: Earned income credit	953.70
Balance subject to normal tax	\$29,052.60
Normal tax at 4%	\$1,162.10
Surtax on \$30,006.30	4,641.89
Total tax	5,803.99
Total tax (alternative tax in case of a net long-term gain or loss)	5,806.59
Defense tax—10%	580.66
Total income and defense taxes	\$ 6,387.25
Total tax assessable	6,387.25
Tax previously assessed	6,550.79
Overassessment	\$ 163.54

Schedule 3—Year ended 12/31/40

Computation of Alternative Tax—1938 Act or I.R.C.

Net income, from Schedule 1	\$32,406.30
Plus: Net long-term loss	65.00
Ordinary net income	\$32,471.30
Less: Personal exemption	\$2,000.00
Credit for dependents	400.00 2,400.00
Balance (surtax net income)	\$30,071.30
Less: Earned income credit	953.70

Plaintiff's Exhibit No. 17—(Continued)

Balance subject to normal tax.....	\$29,117.60
Normal tax at 4%	\$1,164.70
Surtax on \$30,071.30	4,661.39
Partial tax	5,826.09
Minus: 30% of net long-term loss	19.50
	<hr/>
Alternative tax	\$ 5,806.59

PLAINTIFF'S EXHIBIT 18

Treasury Department
Internal Revenue Service

Seattle, Washington,
March 23, 1943.

Seattle Division

[Stamp]: Ross B. Hammond Co., Received Mar.
25, 1943.

Mr. Ross B. Hammond
1214 Spalding Building
Portland, Oregon

In re: Income Tax

Date of Report: March 1, 1943

Year(s) Examined: 1941

Sir:

There is enclosed for your information and files a copy of a report covering the examination of your income tax return(s) for the year(s) indicated, recently made by a representative of this office. You have indicated your agreement to the adjustment of tax liability shown in the report.

The item checked below explains briefly how settlement of the agreed tax liability will be accom-

Plaintiff's Exhibit No. 18—(Continued)

plished through the office of the Collector of Internal Revenue for your district.

Respectfully,

/s/ S. R. STOCKTON,

Internal Revenue Agent in Charge.

Enclosure.

* * * *

[x] Deficiency: The Collector will present to you at and early date a bill for payment of the tax, together with interest, at which time remittance should be made to that official, provided you have not already paid the full amount due.

* * * *

Statement of Total Tax Liability

Name of Taxpayer, Ross B. Hammond.

Date of Report: 3/1/1943.

Examining Officer: Keith L. Leslie.

Year: 1941; Liability Tax, \$6,663.03; Previously Assessed*, Tax: \$6,384.09; Adjustments Proposed in This Report, Tax, Deficiency: \$278.94.

* * *

Preliminary Statement

Cause for additional assessment was the disallowance of a deduction for Oregon State excise taxes applicable to years 1939 and 1940.

Credit has been given on account of the inclusion of gain on exchange of automobile, erroneously included as income by the taxpayer.

In the absence of Mr. Hammond, who is in California, the changes were discussed with his bookkeeper and agreement Form 870 is attached hereto.

Plaintiff's Exhibit No. 18—(Continued)

Schedule 1—1941

Block Adjustments

	Return	Additions to income	Deductions from income	Corrected
3. Interest.....	195.69			195.69
8 Net business profit.....	25,066.50		432.61	24,633.89
9. Net farm income.....	2,223.29			2,223.29
			[Penciled] :	26,857.18
<hr/>				
		[Penciled in margin] :		
10.	27,485.48			27,052.87
	[Penciled] :			541.0574
11. Contributions...	350.00			350.00
12. Interest.....	452.47			452.47
13. Taxes.....	2,354.03	1,013.76		1,340.27
<hr/>				
17.	3,156.50			2,142.74
18. Net Income.....	24,328.98	1,013.76	432.61	24,910.13

Schedule 1-A

Explanation of Items

(8) Net business profits: 432.61.

Gain realized on trade-in of automobile on 12/31/41 was erroneously reported as income on line 8. (Detailed in Schedule G of return) Section 19.112(b) (1)-1, Regulations 103 provides for nonrecognition of gain from this type of exchange but the gain realized is used as an offset against the cost of property acquired.

(13) Taxes: Taxpayer, who is on an accrual basis, deducted as a 1941 expense, the state income

Plaintiff's Exhibit No. 18—(Continued)

taxes accruable in the prior year. This resulted in an excess deduction, computed as follows:

Deducted on return, state income tax accruable in 1940....	\$2,065.58
Correct state income tax accruable 1941.....	1,051.82
<hr/>	
Excess deduction	\$1,013.76

Schedule 2—Year Ended 12/31/41

Computation of Tax

Net income, from Schedule 1.....	\$24,910.13
Less: Personal exemption	\$1,500.00
Credit for dependents	400.00 1,900.00
<hr/>	
Surtax net income	\$23,010.13
Less: Interest on Government obligations.....	545.91
<hr/>	
Balance subject to normal tax.....	\$22,464.22
Normal tax at 4%	\$ 898.57
Surtax on \$23,010.13	5,764.46
Total tax	6,663.03
Correct income tax liability	6,663.03
Tax assessed	6,384.09
<hr/>	
Deficiency	\$ 278.94

[Penciled]: 25,066.50
2

501.330

[Penciled]: 24910.13
20

498.20260

PLAINTIFF'S EXHIBIT No. 19

Treasury Department
Internal Revenue Service

Seattle 4, Washington,
November 6, 1944.

Seattle Division

[Stamp]: Ross B. Hammond Co., Received Nov.
7, 1944.

Mr. Ross B. Hammond
1241 N. Williams Avenue
Portland, Oregon

Dear Mr. Hammond:

I enclose a copy of the report of the examination of your income tax returns for the years shown below. After consideration by this office, the following adjustment of your tax liability appears to be warranted, for the reasons stated in the report:

Year: 1941; Overassessment, \$6,536.10.

If You Agree to this adjustment, the enclosed form of acceptance should be executed and forwarded to this office promptly, in order that a certificate of overassessment may be issued without unnecessary delay.

If You Do Not Agree to the proposed adjustment, you may file a protest executed in triplicate under oath, with this office, within 30 days from the date of this letter, stating the grounds for your exceptions. Any protest so filed will have careful consideration and, if you so request, an opportunity for a hearing in this office will be granted you. This

Plaintiff's Exhibit No. 19—(Continued)

office will be pleased to answer any questions which may occur to you in your examination of the enclosed copy of the report.

Should you fail to file with this office within the 30-day period mentioned either an acceptance of the adjustment on the enclosed form or a written protest, a recommendation will be made to the Commissioner of Internal Revenue that a certificate of overassessment be issued in the amount stated above.

Your prompt acknowledgment of the receipt of this letter and related papers upon the enclosed form will be much appreciated.

Respectfully,

/s/ S. R. STOCKTON,

Internal Revenue Agent in Charge.

Enclosures:

Report of examination.

Form of acceptance.

Form of acknowledgment.

JAS:MP

Statement of Total Tax Liability

Name of Taxpayer, Ross B. Hammond.

Date of Report, August 29, 1944.

Examining Officer, W. G. Williams.

Index:

Year, 1941: Liability Tax, \$126.93; Previously Assessed*, Tax: \$6,663.03; Adjustments Proposed in This Report, Tax, Overassessment: \$6,536.10.

Plaintiff's Exhibit No. 19—(Continued)

*Summary of Adjustments of Assessments

Year 19..

Originally assessed—No. 519000.....	\$6,384.09
Deficiency assessed, 1943 to Apr. 30.....	278.94
	<hr/>
Net Previous Assessments.....	\$6,663.03

o * *

Preliminary Statement

The overassessment is caused by the improper accrual on the return of Oregon State income taxes.

The taxpayer filed claim for refund on Form 843 based upon an additional accrual of Oregon State income tax. The claim is held allowable. The over-assessment claimed was increased in this report by reason of reallocation of profits derived from construction contracts, a portion of the profits reported for 1941 being held properly taxable for 1942.

The changes made in this report were explained to Mr. Robert T. Jacob, agent for the taxpayer. An Agreement Form was not signed.

The taxpayer was married and living with his wife during the entire year 1941. Credit for dependency was claimed for total support of the taxpayer's aged father, who was physically incapable of self-support.

Plaintiff's Exhibit No. 19—(Continued)

Schedule 1—Year: 1941

Item Adjustments

	Original R.A.R.	Deductions from Income	Corrected
3. Interest.....	\$ 195.69		\$ 195.69
8. Business.....	24,633.89	\$20,448.39	4,185.50
9. Farm income.....	2,223.29		2,223.29
10. Total income.....	\$27,052.87	\$20,448.39	\$ 6,604.48
11. Contributions.....	350.00		350.00
12. Interest.....	452.47		452.47
13. Taxes.....	1,340.27	1,172.43	2,512.70
17. Total deductions.....	\$ 2,142.74	\$ 1,172.43	\$ 3,315.17
22. Net income.....	\$24,910.13	\$21,620.82	\$ 3,289.31

Schedule 1-A—Year 1941

Explanation of Items

Item 8—Business Income

The taxpayer computed business income as follows:

Income from construction contracts	\$49,574.91
Rental of equipment	4,500.00
Interest received	96.14
Discounts taken	1,281.18
Miscellaneous income	309.76
Gain on sale of fixed assets	782.53
	<hr/>
	\$56,544.52
Less: Overhead expenses	31,478.02
	<hr/>
Net income reported from business.....	\$25,066.50
Gain on exchange of automobile held non-taxable in the original RAR	432.61
	<hr/>
Amended net income from business, original RAR.....	\$24,633.89

Plaintiff's Exhibit No. 19—(Continued)

In Exhibit "A", RAR on examination of the 1943 return, the profits from construction—contracts allocable to 1941 are reduced as follows:

Milwaukee Housing Project Job. No. 207:

Profit per books and return.....\$ 7,725.91

Profit as amended 4,728.33

Decrease\$ 2,997.58

Troutdale Aluminum Plant—Job No. 208:

Profit per books and return.....\$23,544.42

Profit as amended 6,093.61

Decrease\$17,450.81

Total decrease of profit reported from construction contracts\$20,448.39

Amended profit from construction contracts.....\$ 4,185.50

Item 13—Taxes

The taxpayer claimed deduction for State of Oregon income tax in the amount of.....\$ 2,065.58

In the original RAR this deduction was decreased by the amount of such taxes accruable for prior years..... 1,013.76

Balance held allowable as a deduction.....\$ 1,051.82

In 1943 the Oregon State Tax Commission audited the taxpayer's 1941 State income tax return, assessing as a result thereof additional 1941 tax of which was paid. The additional tax is held to be a deductible accrual as at December 31, 1941 1,172.43

Allowable deduction for 1941.....\$ 2,244.25

Plaintiff's Exhibit No. 19—(Continued)

Schedule 2

Computation of Tax

1. Net income, from Schedule 1	\$3,289.31
2. Less: Personal exemption	\$1,500.00
Credit for dependents	400.00 1,900.00
3. Surtax net income	\$1,389.31
4. Less: Earned income credit.....	300.00
5. Balance subject to normal tax.....	\$1,089.31
6. Normal tax at 4 percent.....	\$43.75
7. Surtax on item 3.....	83.36
10. Correct income tax liability	126.93
11. Tax assessed	6,663.03
12. Overassessment of income tax	\$6,536.10

District of Oregon.

Acceptance of Proposed Overassessment

The following overassessment or overassessments of tax are hereby accepted as correct:

Taxable year ended, 1941, income tax in the sum of \$6,536.10, amounting to the total sum of \$6,536.10, as indicated in the statement furnished the undersigned taxpayer(s) under date of 10/6/44.

ROSS B. HAMMOND,
Portland, Oregon.

Note: The execution and filing of this acceptance at the address shown in the accompanying letter will expedite the indicated adjustment of your tax liability. This acceptance is not an agreement as

Plaintiff's Exhibit No. 19—(Continued)

provided under section 3760 of the Internal Revenue Code.

If this acceptance is executed with respect to a year for which a Joint Return of a Husband and Wife was filed, it must be signed by both spouses, except that one spouse may sign as the agent for the other.

Where the taxpayer is a corporation, the agreement shall be signed with the corporate name, followed by the signature of such officer or officers of the corporation as are empowered to sign for the corporation, in addition to which the seal of the corporation must be affixed.

PLAINTIFF'S EXHIBIT No. 20

Treasury Department
Internal Revenue Service

Seattle 4, Washington,
November 6, 1944.

[Stamp]: Ross B. Hammond Co., Received, Nov. 7, 1944.

Seattle Division

Mr. Ross B. Hammond
P. O. Box 3901
1241 N. Williams Avenue
Portland, Oregon

Dear Mr. Hammond:

I enclose a copy of the report of the examination of your income-tax returns for the years shown below. After consideration by this office, the fol-

Plaintiff's Exhibit No. 20—(Continued)

lowing adjustment of your tax liability appears to be warranted, for the reasons stated in the report:

Year, 1943; Deficiency, \$145,537.77.

If You Agree to this adjustment, the enclosed form of waiver should be executed and forwarded to this office promptly, in order to permit the early assessment of the additional tax and to stop the accumulation of interest. Such interest will cease 30 days after the receipt of the executed form, or upon the payment of the additional tax to the collector, whichever occurs first.

If you desire to make immediate payment of the additional tax without awaiting assessment, you should forward your remittance to the Collector of Internal Revenue at Portland 9, Oregon, enclosing this letter, or a copy thereof. Interest on the additional tax should be included in your remittance, computed at the rate of 6 per cent per annum from the due date of the first installment to the date of payment.

If You Do Not Agree to the proposed adjustment, you may file a protest, executed in triplicate under oath, with this office, within 30 days from the date of this letter, stating the grounds for your exceptions. Any protest so filed will have careful consideration, and, if you so request, an opportunity for a hearing in this office will be granted you prior to final determination of any deficiency against you. This letter is not a final notice of deficiency, and this office will be pleased to answer any ques-

Plaintiff's Exhibit No. 20—(Continued)

tions which may occur to you in your examination of the enclosed copy of the report.

Should you fail to pay the additional tax to the collector of internal revenue or to file with this office within the 30-day period mentioned either a waiver on the enclosed form or a written protest, final determination of your tax liability will be made and a notice of deficiency will be sent you in accordance with the provisions of law applicable to the assessment and collection of income and profits-tax deficiencies.

Your prompt acknowledgment of the receipt of this letter and related papers upon the enclosed form will be much appreciated.

Respectfully,

/s/ S. R. STOCKTON,
Internal Revenue Agent in
Charge.

Enclosures:

Report of examination.

Form of waiver.

Form of acknowledgment.

JAS:MP

Plaintiff's Exhibit No. 20—(Continued)

Name of Taxpayer, Ross B. Hammond.

Date of Report, August 29, 1944.

Examining Officer, W. G. Williams.

Statement of Total Tax Liability

Index:

Year: 1943; Adjustments Proposed in This Report, Tax, Deficiency: \$145,537.77.

* * *

Preliminary Statement

The cause of the additional tax was an improper computation of profits from construction contracts, and the claim of a partnership status for the taxpayer's business, Ross B. Hammond Company.

The changes made in this report were explained to Mr. Robert T. Jacob, agent for the taxpayer. Agreement Form 870 was not signed by the taxpayer.

The taxpayer was married and living with his wife during the entire period covered by the examination. Credit for dependency of the taxpayer's aged father, physically incapable of self-support.

The taxpayer and his wife, Katherine S. Hammond, filed separate returns. The entire personal exemption was claimed on the return of the taxpayer; none was claimed on the return of his wife.

Plaintiff's Exhibit No. 20—(Continued)

Schedule 1—Year: 1942

Item Adjustments

	Return	Additions to income	Deductions from income	Corrected
3. Interest.....	\$ 91.64			\$ 91.64
6. Farm operation....	(2,688.19)			(2,688.19)
7. Annuities.....	20.04			20.04
8. (a) Sale cap. assets.....	1,751.09		\$2,377.71	(626.62)
(b) Sale other assets.....	(4,755.42)	\$ 4,755.42		
9. Business.....	149,089.15	174,884.99		323,974.14
11. Total income.....	\$143,508.31	\$179,640.41	\$2,377.71	\$320,771.01
12. Contributions.....	900.50			900.50
13. Interest.....	3,881.84	323.61		3,558.23
18. Total deduc.....	\$ 4,842.13	\$ 323.61		\$ 5,418.52
22. Net income.....	\$138,666.18	\$179,964.02	\$2,377.71	\$316,242.49

Schedule 1-A

Explanation of Items

Item 8 (a)—Sale of Capital Assets

During the year 1942 the taxpayer sold at a loss two parcels of real estate which were not used in the taxpayer's trade or business. The loss sustained was claimed in the return at 100% thereof as being sustained by a sale of property, other than capital assets.

The term "capital assets" is defined in the Internal Revenue Code, effective for 1942, as being property held by the taxpayer (whether or not con-

Plaintiff's Exhibit No. 20—(Continued)

nected with his trade or business) but does not include stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or property, used in the business, of a character which is subject to the allowance for depreciation.**

The real estate sold by the taxpayer does **not** fall within the above-described exceptions and must therefore be held to have been capital assets in the hands of the taxpayer. The deductible loss is computed as follows:

Sale price, less expenses of sale..	\$ 1,389.90
Cost	6,145.32
<hr/>	
Loss sustained on sale.....	\$(4,755.42)
50% deductible, the assets having	
been held more than 6 months	\$(2,377.71)
Long term capital gain reported.	1,751.09
<hr/>	
Net capital loss as amended.....	\$ (626.62)
Net capital gain reported.....	1,751.09
<hr/>	
Reduction of income.....	\$ 2,377.71

Item 8(b)—Sale of Other Than Capital Assets,
\$4,755.42, Transferred to Item 8 (a).

Plaintiff's Exhibit No. 20—(Continued)

Item 9—Income from business.

The taxpayer is engaged in constructing buildings and in other construction work. The business is carried on as a sole proprietorship, operating under the assumed business name, Ross B. Hammond Company. The business was acquired by the taxpayer December 30, 1937, at the dissolution of the corporation, Ross B. Hammond, Inc., of which the taxpayer was the sole stockholder.

The year 1938 was the taxpayer's first year of operation of the business as a sole proprietorship. The taxpayer had the right to elect in that year the accounting method to be used as a basis for reporting the profits derived from long-term construction contracts. The taxpayer's books were kept on the accrual basis. Only one contract was operated in 1938, the construction of the State Capitol Building, Salem, Oregon. Construction under this contract was begun by the corporation and completed in 1939 by the taxpayer. In the taxpayer's 1938 return the profits earned from the contract were reported on the basis of percentage of completion. The computation was made in the return by estimating the total profit to be received from the contract, applying thereto the per cent of completion, as determined by the engineers (98.3), and deducting from the result the profit reported by the corporation. The estimated profit was determined by subtracting from the estimated total income from the contract the expenditures made to December 31, 1938, plus the estimated amount

Plaintiff's Exhibit No. 20—(Continued)

to be paid in 1939. The 1938 profit was computed in the same manner in the taxpayer's books.

For the years 1939, 1940, 1941, 1942, and 1943 the taxpayer made no attempt to keep the books or to prepare the returns upon the basis of percentage of completion. The contract accounts were kept and the returns prepared upon an attempted accrual basis. Proper accruals were not, however, entered in the contract accounts in the books. The income received was not properly accrued; cost of materials, for which the taxpayer was not reimbursed, was not set up as prepaid expense. The lack of proper accrual accounting resulted in a distortion of profits as between the years included in the period of construction.

The question as to whether the taxpayer may change from an established basis for reporting profits derived from long-term constructions contracts to a different basis without first securing the permission of the Commissioner was decided in the case of *Ross B. Hammond, Inc.*, 36 BTA 498, in which it was held that the corporation could not change from the completed contract basis, upon which it had previously filed its returns, to the percentage of completion basis. Upon which the return under examination was filed, without first obtaining such permission.

If permission has been granted the taxpayer to change his basis of accounting, evidence of such permission has not been made available to the examining officer. Regardless of whether such permission was granted, the taxpayer's method of ac-

Plaintiff's Exhibit No. 20—(Continued)

counting does distort the yearly profits. It would be extremely difficult at this time to place the taxpayer's accounts upon a true accrual basis or to determine the per cent of completion of the total of any contract at the close of any of the years under examination. The engineer's estimates show the per cent of completion of each of the many component items specified in the contracts not of the total contract.

Section 41 of the Internal Revenue Code provides: "The net income shall be computed upon the basis of the taxpayer's annual accounting period * * * in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the Commissioner does clearly reflect the income."

The distortion of profits must be eliminated in order to more clearly reflect the true income for each of the years under review, and, as neither the true accrual method nor the true percentage of completion method can now be strictly applied, the only recourse to arrive at a proper and proportionate profit is to compute the yearly profit for each contract by applying to the yearly income of each contract the per cent which is the ratio of the total profit derived from the contract to the total income

Plaintiff's Exhibit No. 20—(Continued)

received from the contract. This method had been applied in Exhibit "A," and approximates the method established by the taxpayer in his 1938 return.

Salary of Son:

The taxpayer employed his son, William A. Hammond, in his business operated as Ross B. Hammond Company, paying for his services in 1942 a salary of \$7,500.00. On December 31, 1942, the taxpayer caused a journal entry to be made charging Jobs 208 and 210 with the amount of \$37,129.66, which was credited to Accounts Payable, on behalf of W. A. Hammond. W. A. Hammond had no personal or drawing account in the books. The amount remained in the control accounts payable until December 31, 1943, when the amount was transferred from Accounts Payable to credit of "Ross B. Hammond, Capital." This additional salary was not deducted as an expense in the determination of the net profit from the business used as the basis for division of profits to H. M. Mason and A. V. Petersen. The salary was never paid. In Exhibit "A" the amount of the additional salary, \$37,129.66, is restored to income received from Jobs 208 and 210. The salary paid W. A. Hammond, in the amount of \$7,500.00, is allowed to remain as a deduction in the expenses charged to Jobs 208 and 210.

Plaintiff's Exhibit No. 20—(Continued)

Net profit reported in the return from contracts,		
Exhibit A	\$195,680.63	
Discounts taken	1,515.57	
Profit from Job 204—not listed in Exhibit A.....	127.30	
		<hr/>
		\$197,323.50
Less: Overhead expenses, not allocated		
to contracts	\$ 48,557.96	
Taxes, deducted on line 14 of the return	323.61	\$ 48,234.35
		<hr/>
Amount reported on line 9 of the return.....	\$149,089.15	
Amended contract profit, Exhibit A.....	\$370,889.23	
Add: Discounts taken	1,515.57	
Profit from Job No. 204.....	127.30	
		<hr/>
	\$372,532.10	
Deduct unallocated overhead expense.....	48,557.96	323,974.14
		<hr/>
Increase		\$174,884.99

Item 14—Taxes

Taxes deducted on line 14 of the return, included in the unallocated overhead \$48,557.96, in Item 9, above.

Schedule 2
Computation of Tax

1. Net income, from Schedule 1.....	\$316,252.49	
2. Less: Personal exemption	\$1,200.00	
Credit for dependents.....	350.00	1,550.00
		<hr/>
3. Surtax net income	\$314,702.49	
4. Less: Earned income credit.....		1,400.00
		<hr/>
5. Balance subject to normal tax.....	\$313,302.49	
6. Normal tax at 6 percent.....	\$ 18,798.15	
7. Surtax on item 3.....	233,196.04	
		<hr/>
10. Correct income tax liability.....		\$251,994.19

Plaintiff's Exhibit No. 20—(Continued)

Schedule 3—Year 1943

Adjustments to Net Income

	Income Tax Net Income	Victory Tax Net Income
Net income as disclosed by return.....	\$125,662.41	\$128,086.05
As corrected	78,224.01	80,647.65
Net adjustment as computed below.....	47,438.40	47,438.40
Nontaxable income and additional deductions:		
(1) Business income	\$ 47,438.40	\$ 47,438.40
Net adjustment as above.....	\$ 47,438.40	\$ 47,438.40

Schedule 3-A

Explanation of Items

(1) Business Income

Partnership

At the time the 1943 individual return of Ross B. Hammond was prepared, Mr. Hammond also caused to be prepared and filed partnership returns for the years 1942 and 1943, to conform to a partnership agreement entered into under date of February 3, 1942, by Ross B. Hammond and his son, William A. Hammond. The partnership agreement was predicated upon the sale by Ross B. Hammond to William A. Hammond of one-fourth of the net assets of Ross B. Hammond Company, which, prior thereto, was a sole proprietorship owned by Ross B. Hammond. Partnership profits were to be distributed, 75% to Ross B. Hammond, and 25% to William A. Hammond. Each party was to have an equal voice in the control of the business and operation of the partnership. In payment of

Plaintiff's Exhibit No. 20—(Continued)

one-fourth of the net assets of the business, William A. Hammond gave his note to Ross B. Hammond.

Ross B. Hammond was paid a yearly salary of \$7,500.00, which was charged in the books to the account, "Office Salaries." December 31, 1943, this amount was transferred to "Ross B. Hammond, Drawing." At the close of 1943 the entire profits of the business were credited to the account, "Ross B. Hammond, Capital."

The individual returns of Ross B. Hammond and William A. Hammond, prepared for 1943, each reported their distributive shares of partnership profits.

The books of the sole proprietorship were continued without change in accounting. The drawing account and capital account remained under the name of Ross B. Hammond. No personal, drawing or capital accounts were set up for William A. Hammond.

Under date of February 3, 1942, Ross B. Hammond entered into agreements with H. M. Mason and A. V. Petersen, whereby Mason and Petersen were to participate in the profits of Ross B. Hammond Company in the ratio of 20% in the case of Mason and 15% in the case of Petersen. These agreements were entered into by Ross B. Hammond as an individual.

The salary of William A. Hammond, \$7,500, was deducted as an expense of the business to determine the profits upon which were based the participations of Mason and Petersen. This salary was considered

Plaintiff's Exhibit No. 20—(Continued)

adequate compensation for the services of William A. Hammond and William A. Hammond was withheld from both Mason and Petersen.

The agencies of the United States, with which Ross B. Hammond executed construction contracts, were not informed of the partnership status of Ross B. Hammond Company. Ross B. Hammond represented to these agencies, by affidavit, that he was an individual operating under the name and style of Ross B. Hammond Company. Such representations were also made to all other parties with whom Ross B. Hammond executed construction contracts or had other business relations.

Ross B. Hammond represented to the officials of the United States National Bank of Portland, Oregon, from whom he borrowed large sums of money for use in his construction contracts, that he owned all the assets of Ross B. Hammond Company. He made no representations to the bank that Ross B. Hammond was being operated as a partnership.

The bonds required of Ross B. Hammond in the execution of his construction contracts were executed by the General Casualty Company of America. Ross B. Hammond represented to the bonding company that the assets of Ross B. Hammond Company were owned solely by him.

Subsequent to February 3, 1942, Ross B. Hammond purchased securities, in his own name, with funds of Ross B. Hammond Company. In January, 1943 Ross B. Hammond purchased a tract of real

Plaintiff's Exhibit No. 20—(Continued)

estate with a building thereon, at 1241 N. Williams Avenue, Portland, Oregon, the site of the present office of Ross B. Hammond Company. This purchase was made with funds of Ross B. Hammond Company. Title was passed to Ross B. Hammond.

On January 4, 1937, Ross B. Hammond filed an assumed business name certificate with the clerk of Multnomah County, Oregon, making affidavit that he had the sole interest in or the sole operator of the business of Ross B. Hammond Company. An assumed business name certificate showing the true owners and operators of the business of Ross B. Hammond Company to be Ross B. Hammond and William A. Hammond was never filed with the clerk of Multnomah County, as required by Section 43-504 of the Oregon statutes whenever a change in ownership occurs in any business operating under an assumed business name.

The checking account of Ross B. Hammond Company was kept in the United States National Bank, a separate account being kept for each of the construction contracts. Checks on these accounts were signed: "Ross B. Hammond Company, by" Ross B. Hammond, or, by any two joint signatures of W. A. Hammond, H. M. Mason, A. V. Petersen and Rosalie Novak. Thus, W. A. Hammond was given no more authority to draw on the funds of the business than was granted to the other employees mentioned.

It is held in this report that the partnership existed only in form, not in fact. Ross B. Hammond represented to all his creditors; to the bond-

Plaintiff's Exhibit No. 20—(Continued)

ing company; to the bank; to all agencies and persons with whom he did business; and to his employees that Ross B. Hammond Company was a sole proprietorship and he, Ross B. Hammond, owned all its assets. Ross B. Hammond retained sole control of the business. W. A. Hammond was not permitted to exercise any control as a part owner of the business. W. A. Hammond contributed no capital to the business. The services contributed to the business by W. A. Hammond were adequately compensated for by the salary paid him.

It is held that all the profits of the business, except for the distribution to Mason and Petersen, are taxable to Ross B. Hammond in his individual return.

The business income as amended is computed as follows:

Profits from construction contracts, reported on partnership return,

Exhibit "A"	\$211,306.11	
Rental of equipment	\$2,965.80	
Interest received	2,755.59	
Discounts taken	1,135.12	6,856.51
		<hr/>
		\$218,162.62
Less unallocated overhead expense:		
Salaries and wages	\$12,269.52	
Repairs	1,140.07	
Interest paid	3,142.46	
Taxes	1,338.94	
Depreciation	3,312.16	
Other deductions	20,779.08	41,982.23
		<hr/>
Partnership net income.....	\$176,180.39	
		<hr/>

Plaintiff's Exhibit No. 20—(Continued)

75% claimed distributable to Ross B. Hammond.....	\$132,135.29	
Amended profits from contracts, Exhibit "A".....	\$127,322.61	
Add: Other income, detailed above.....	6,856.51	
		<hr/>
		\$134,179.12
Deduct: Unallocated overhead expense.....	\$41,982.23	
Salary of W. A. Hammond, considered allow- able, not deducted in the partnership re- turn	7,500.00	49,482.23
		<hr/>
Business net income as amended.....	\$	84,696.89
Amount reported		132,125.29
		<hr/>
Decrease	\$	47,438.40

Schedule 4—Year: 1943'

Computation of Income and Victory Tax

1. Income tax net income, from Schedule 1.....	\$	78,224.01
2. Less: Personal exemption	\$	1,200.00
Credit for dependents	350.00	1,550.00
		<hr/>
3. Surtax net income	\$	76,674.01
4. Less: Earned income credit		1,400.00
		<hr/>
5. Balance subject to normal tax.....	\$	75,274.01
6. Normal tax at 6 percent.....	\$	4,516.44
7. Surtax on item 3.....	41,545.29	
		<hr/>
8. Total income tax (item 6 plus item 7) or.....		46,061.73
		<hr/>
Total alternative tax, Schedule 3.....	\$	46,047.73
		<hr/>
10. Balance of Income Tax.....	\$	46,047.73
11. Victory tax net income.....	\$80,647.65	
12. Less: Specific exemption.....	624.00	
13. Income subject to Victory tax.....	80,023.65	
		<hr/>

Plaintiff's Exhibit No. 20—(Continued)

14. Victory tax before credit (5 percent of line 13)	\$ 4,001.18
15. Less: Victory tax credit.....	600.00
	<hr/>
16. Net victory tax	3,401.18
17. Net income tax and victory tax.....	49,448.91
	<hr/>
18. Income tax for 1942, Schedule 2.....	\$251,994.19
	<hr/>
19. Amount of item 17 or 18 whichever is larger.....	\$251,994.19
20. Forgiveness feature (not to be used if either item 17 or 18 is \$50 or less) :	
(a) Amount of item 17 or 18 which- ever is smaller.....	\$49,448.91
(b) Amount forgiven (\$50 or $\frac{3}{4}$ of (a) whichever is larger).....	37,086.68
(c) Amount unforgiven	12,362.23
	<hr/>
21. Total income and victory tax liability.....	\$264,356.42
22. Income and victory tax liability disclosed by return	118,818.65
23. Deficiency in income and victory tax.....	145,537.77

Schedule 5

Computation of Alternative Tax

Long term capital gain:	
Real estate b.o.f. 9/18/42 for.....	\$ 4,200.00
Sold 9/3/43 for.....	4,300.00
	<hr/>
Long term capital gain.....	\$ 100.00
	<hr/>
Taxable gain, 50% of \$100.00.....	\$ 50.00
	<hr/>
Net income, Schedule 1	\$78,224.01
Long term capital gain.....	50.00
	<hr/>
Ordinary net income	\$78,174.01
Personal exemption	\$1,200.00
Credit for dependents	350.00
	<hr/>
Balance, surtax net income	\$76,624.01
Earned income credit	1,400.00
	<hr/>

Balance subject to normal tax.....	\$75,224.01
Normal tax, 6% of \$75,224.01.....	\$ 41,513.44
Surtax	41,509.29
Partial tax	\$46,022.73
50% of \$50.00	25.00
Alternative tax	\$46,047.73

Plaintiff's Exhibit No. 20—(Continued)

Schedule 6—Year: 1943

Modified Exhibit D

	Shown by Return	As Corrected
1. Total income and victory tax liability	\$118,818.65	\$264,356.42
Less:		
(a) Income and victory tax withheld by employer	None	
(b) Income tax paid on 1942 income	\$47,995.94	
(c) Tax paid on 1943 in- come on account of de- claration of estimated tax	56,310.76	104,306.70
Less: Previously allowed		\$118,818.65
3. Deficiency in income and victory tax.....		\$145,537.77

Allocation of Profits from Construction Contracts

MILWAUKEE HOUSING PROJECT—Job No. 207:		1911	1912	1913	Total
Income per books.....		\$ 36,517.28	\$ 215,018.89	\$ 7,634.09	\$ 289,200.76
Costs charged to accounts:					
Labor.....		\$ 6,624.34	\$ 12,961.32		\$ 49,585.66
Material.....		22,197.53	179,127.40	\$ 575.12	202,200.05
Total costs.....		\$ 28,821.87	\$ 222,388.72	\$ 575.12	\$ 251,785.71
Net profits per books.....		\$ 7,725.91	\$ 22,630.17	\$ 7,058.97	\$ 37,415.05
Accruing 1913 sales and costs at 12/31/12:					
Transfer of income to 1913.....			\$ 7,634.09		
Amended sales.....		\$ 36,517.78	\$ 252,652.98		\$ 289,200.76
Per cent of total profit to total income:					
37,415.05/289,200.76, or 12.93797%—Allocating total					
profit to the years in proportion to the yearly income,					
12.93797% of income.....					
Profit reported.....		\$ 4,728.33	\$ 32,686.72		\$ 37,415.05
		7,725.91	22,630.17	\$ 7,058.97	37,415.05
Increase (decrease).....		\$ (2,997.58)	\$ 10,056.55	\$ (7,058.97)	
TROUTDALE ALUMINUM PLANT—Job No. 208:					
Income received.....		\$ 59,775.31	\$ 1,036,623.10	\$ 274,131.59	\$ 1,370,830.00
Costs charged to account:					
Labor.....		\$ 6,854.77	\$ 359,907.16	\$ 67,565.87	\$ 434,327.80
Material.....		29,376.12	697,502.67	112,929.10	839,807.89
Total costs.....		\$ 36,230.89	\$ 1,057,409.83	\$ 180,494.97	\$ 1,274,135.69
Profit per books.....		\$ 23,544.42	\$ (20,786.73)	\$ 93,936.62	\$ 96,691.31
TROUTDALE ALUMINUM PLANT—Job No. 208-A:					
Income received.....			\$ 200,661.74	\$ 34,971.17	\$ 235,632.91
Costs charged to account:					
Labor.....			\$ 75,856.12		\$ 75,856.12
Material.....			85,094.98	\$ 16,892.61	101,987.59
Total costs.....			\$ 160,951.10	\$ 16,892.61	\$ 177,843.71
Profit per books.....			\$ 39,710.64	\$ 18,078.56	\$ 57,789.20
In the returns the sales, costs, and profits from Jobs 208 and 208-A were consolidated for the stated reason that the work performed for the same agency in both contracts and the labor and material costs were not properly allocated to each contract.					
TROUTDALE ALUMINUM PLANT—					
Consolidating Job Nos. 208-208-A:					
Income received.....		1911	1912	1913	Total
		\$ 59,775.31	\$ 1,237,284.84	\$ 309,402.76	\$ 1,606,462.91
Costs charged to account:					
Labor.....		\$ 6,854.77	\$ 435,763.28	\$ 67,565.87	\$ 510,183.92
Material.....		29,376.12	782,597.65	129,821.71	911,795.48
Total costs.....		\$ 36,230.89	\$ 1,218,360.93	\$ 197,387.58	\$ 1,451,979.10
Profit per books.....		\$ 23,544.42	\$ 18,923.91	\$ 112,015.18	\$ 151,183.51
Restoring to profit the deduction of salary credited to W. A. Hammond in excess of \$7,500.00, 1/4 of which was allocated to this contract:					
Salary deducted.....					\$11,157.41
Less: 25% of \$7,500.00, allowable.....			1,875.00		1,875.00
			9,282.41		9,282.41

Exhibit A—(Continued)

Amended Net Profit.....	1941	1942	1943	Total
Percent of total profit to total income: 163,765.92/1,606,162.91, or, 10.194192%. Allocation of total profit to years, in proportion to the yearly income: 9,282.41/163,765.92, or 10.194192%, 10.194192% of yearly income.....	\$ 23,544.42	\$ 28,206.32	\$ 112,015.18	\$ 163,765.92
Profits reported.....	\$ 6,093.61 23,544.42	\$ 126,131.20 18,923.91	\$ 31,541.11 112,015.18	\$ 163,765.92 154,483.51
Increase (Decrease).....	\$ (17,450.81)	\$ 107,207.29	\$ (80,474.07)	\$ 9,282.41

BONNEVILLE CONTROL HOUSE—Job No. 209:

Income received.....	\$ 42,853.14
Costs charged to account:	
Labor.....	\$ 4,328.55
Material.....	32,120.99
Total costs.....	\$ 36,449.54
Profit reported.....	\$ 6,408.60

The income costs and net profit from this contract were consolidated with the figures of Jobs 208 and 208-A and the consolidated figures reported as Job 208 in the 1942 return. While this contract was performed on the site of the Aluminum Plant contract, the contract was executed as a separate construction project from Job 208, and the profits therefrom are treated herein as separate and apart from those derived from Jobs 208 and 208-A.

GULDS LAKE—Job No. 210:

	42 [Penciled figures] 13	
Income received.....	\$ 1,072,360.85	\$ 29,155.98
Costs charged to accounts:		
Labor.....	\$ 139,912.26	\$ 1,170.00
Material.....	817,698.31	3,220.13
Total costs.....	\$ 957,610.57	\$ 4,390.13
Profit reported.....	\$ 114,750.28	\$ 21,765.85
Restoring to profit the deduction of salary credited to W. A. Hammond in excess of \$7,500.00, $\frac{3}{4}$ of which was allocated to this contract:		
Salary deducted.....	\$ 33,472.25	
Less: 75% of \$7,500.00, allowable.....	5,025.00	27,847.25
Amended profits.....	\$ 142,597.53	\$ 24,765.85
		\$ 167,363.38

Allocation of total profit to years in proportion to the

yearly income: 167,363.38/1,101,516.83, or, 15.193901% of yearly income	\$ 162,933.45	\$ 4,429.93	\$ 167,363.38
Profit reported.....	114,750.28	24,765.85	139,516.13
Increase (decrease).....	\$ 48,183.17	\$ (20,335.92)	\$ 27,847.25

UNIVERSITY HOMES HOUSING PROJECT

Job No. 211 (cost-plus):

Income received.....	\$ 72,638.48	\$ 73,007.75	\$ 145,716.23
Less: Superintendence charged.....	39,670.81	20,328.51	59,999.32
Profit reported.....	\$ 32,967.67	\$ 52,749.24	\$ 85,716.91
Allocation of total profit: 85,716.91/145,716.23, or 58.821545% of yearly income.	42,729.26	42,987.65	85,716.91
Increase (decrease).....	\$ 9,761.59	\$ (9,761.59)	

Plaintiff's Exhibit No. 20—(Continued)

Exhibit A—(Continued)

COLUMBIA STEEL CASTING

PLANT—Job No. 213:	1943	1944	Total
Income received	\$375,430.50	\$ 35,139.81	\$410,570.31
<hr/>			
Costs charged to account:			
Labor	\$ 52,691.89	\$ 2,243.85	\$ 54,935.74
Material	312,578.85	5,285.45	317,864.30
<hr/>			
Total costs	\$365,270.74	\$ 7,529.30	\$372,800.04
<hr/>			
Net profit reported.....	\$ 10,159.76	\$ 27,610.51	\$ 37,770.27
Estimated additional equip- ment rental .....	.....	1,100.00	1,100.00
<hr/>			
Amended profit	\$ 10,159.76	\$ 28,710.51	\$ 38,870.27
Allocation of total profit: 38,870.27/411,670.31, or 9.4420875% of yearly in- come	35,448.48	3,421.79	38,870.27
<hr/>			
Increase (Decrease)	\$ 25,288.72	(\$25,288.72)	

OREGON WOODWORKING

Job No. 214:

Income received	\$ 3,146.51
<hr/>	
Costs charged to account	
Labor	\$ 1,781.60
Material	1,078.86
<hr/>	
Total costs	\$ 2,860.46
<hr/>	
Net profit reported— not changed	\$ 286.05

NORTHWESTERN ICE COM-

PANY PLANT—Job No. 215:

Income received	\$ 51,583.98	\$ 15,198.59	\$ 66,782.57
<hr/>		<hr/>	<hr/>

Plaintiff's Exhibit No. 20—(Continued)

Exhibit A—(Continued)

Costs charged to account:	1943	1944	Total
Labor	\$ 44,793.07	\$ 7,375.69	\$ 52,168.76
Material	6,790.91	2,053.57	8,844.48
Total cost	\$ 51,583.98	\$ 9,429.26	\$ 61,013.24
Net profit reported	None	\$ 5,769.33	\$ 5,769.33
Allocation of total profit to years in proportion to the yearly income: 5,769.33/66,782.57, or 8.6389757%	\$ 4,456.33	1,313.00	5,769.33
Increase (Decrease)	\$ 4,456.33	\$ (4,456.33)	

CORNELUS FLAX PLANT

Job No. 216:

Income reported	\$ 99,373.53	\$ 2,626.00	\$101,999.53
Costs charged to account:			
Labor	\$ 38,504.98	\$ 375.30	\$ 38,880.28
Material	62,809.91	1,432.15	64,242.06
Total costs	\$101,314.89	\$ 1,807.45	\$103,122.34
Net profit reported.....	\$ (1,941.36)	\$ 818.55	\$ (1,122.81)
Allocation of total net loss to years in proportion to yearly income: 1,122.81/101,999.53, or 1.1007991%	\$ (1,093.90)	\$ (28.91)	\$ 1,122.81
Increase (Decrease)	\$ 847.46	\$ (847.46)	

KAISER RESERVE WARE-

HOUSE—Job No. 217:

Income received	\$ 87,300.25	\$110,397.75	\$197,698.00
-----------------------	--------------	--------------	--------------

Plaintiff's Exhibit No. 20—(Continued)

Exhibit A—(Continued)

Costs charged to account:	1943	1944	Total
Labor	\$ 20,751.44	\$ 24,183.24	\$ 44,934.68
Material	63,133.95	70,436.57	133,570.52
Total costs	\$ 83,885.39	\$ 94,619.81	\$178,505.20
Net profit reported.....	\$ 3,414.86	\$ 15,777.94	\$ 19,192.80
Allocation of total profit to years in proportion to yearly income: 19,192.80/197,698.00, or 9.7081407	8,475.23	10,717.57	19,192.80
Increase (Decrease)	\$ 5,060.37	\$ (5,060.37)	

NEGRO PERSONAL SERVICE
BUILDING—Job No. 220

Income received	\$ 7,559.00	\$ 7,283.00	\$ 14,842.00
Costs charged to account:			
Labor	\$ 2,082.56	\$ 1,461.75	\$ 3,544.31
Material	2,678.88	7,064.25	9,743.13
Total cost	\$ 4,761.44	\$ 8,526.00	\$ 13,287.44
Net profit reported.....	\$ 2,797.56	\$ (1,243.00)	\$ 1,554.56
Allocation of total profit to years in proportion to yearly income: 1,554.56/14,842.00, or 10.47406%	791.73	762.83	
Increase (Decrease)	\$ (2,005.83)	\$ 2,005.83	

Plaintiff's Exhibit No. 20—(Continued)

Exhibit A—(Continued)

[illegible]

Plaintiff's Exhibit No. 20—(Continued)

EXHIBIT B

Analysis of Capital Account

	Dr.	Cr.	Balance
12/31/40 Balance			\$18,138.19
12/31/40 Drawings	\$28,508.67		
12/31/41 1941 profits		\$25,066.50	
12/31/41 Balance			14,696.02
12/31/42 Drawings	8,451.17		
12/31/42 1942 profits		148,765.54	
12/31/42 Balance			155,010.39
12/31/43 Trf. credit from accts. pay—1942		37,129.66	
12/31/43 1942 drawings R.B.H. restored		8,451.17	
12/31/43 1943 profits		176,180.39	
			376,771.61
12/31/43 R. B. Hammond, Draw- ing—not closed at 12/31/43 to R. B. Hammond, capital 127,054.01			
12/31/43 Actual balance			249,717.60

UNITED STATES
INDIVIDUAL INCOME TAX RETURN

Page 1
1942

OPTIONAL FORM 1040A MAY BE FILED INSTEAD OF THIS FORM IF GROSS INCOME IS REPORTED ON THE CASH BASIS FOR THE CALENDAR YEAR, IS NOT MORE THAN \$3,000, AND CONSISTS WHOLLY OF SALARY, WAGES, OTHER COMPENSATION FOR PERSONAL SERVICES, DIVIDENDS, INTEREST OR ANNUITIES.

FOR CALENDAR YEAR 1942

or fiscal year beginning Jan. 1, 1942, and ending Jan. 1, 1943

PRINT NAME AND ADDRESS PLAINLY. (See Instruction C)

Alfred V. Petersen

(Name) (Use given names of both husband and wife, if this is a joint return)

625 S. E. 52nd Ave.

(Street and number, or rural route)

Portland Multnomah Oregon

(Post office)

(County)

(State)

Supt. of construction

(Occupation)

540-03-9006

(Social Security number, if any)

Rose B. Hammond Co.

(Name and address of employer)

1214 Spaulding Bldg. Portland, Oregon

(If more than one employer, attach statement showing name and address and amount received from each)

(Do not use these spaces)

File Code 1-722

Serial No. _____

District _____

(Cashier's Stamp)

Cash—Check—M. O.

First Payment

\$ 289.39

Item and Instruction No.	INCOME	Amount	Deductible Expenses (Attach statement and statement)
1. Salaries and other compensation for personal services, \$ <u>7500.00</u>		\$ <u>7500.00</u>	
2. Dividends			
3. Interest on bank deposits, notes, etc.			
4. Interest on corporation bonds, etc.			Less amortizable bond premium
5. Interest on Government obligations, etc.:			
(a) From line (h), Schedule A			
(b) From line (f), Schedule A			
6. Rents and royalties. (From Schedule B)			
7. Annuities			
ITEMS 8, 9, AND 10, BELOW (AND PAGES 3 AND 4) NEED NOT BE CONSIDERED UNLESS YOU HAVE INCOME (OR LOSSES) IN ADDITION TO ITEMS ABOVE.			
8. (a) Net gain (or loss) from sale or exchange of capital assets. (From Schedule F)			
(b) Net gain (or loss) from sale or exchange of property other than capital assets. (From Schedule G)			
9. Net profit (or loss) from business or profession. (From Schedule H)			
(State total receipts, from line 1, Schedule H, \$ _____)			
10. Income (or loss) from partnerships; fiduciary income; and other income. (From Schedule I)			
11. Total income in items 1 to 10			\$ <u>7500.00</u>
DEDUCTIONS			
12. Contributions paid. (Explain in Schedule C)		\$ <u>15.00</u>	
13. Interest. (Explain in Schedule C)		<u>249.53</u>	
14. Taxes. (Explain in Schedule C)		<u>180.78</u>	
15. Losses from fire, storm, shipwreck, or other casualty, or theft. (Explain in Schedule C)		<u>51.20</u>	
16. Bad debts. (Explain in Schedule C)			
17. Other deductions authorized by law. (Explain in Schedule C)			
18. Total deductions in items 12 to 17			<u>496.51</u>
19. Net income (item 11 minus item 18)			\$ <u>7008.49</u>

COMPUTATION OF TAX

20. Net income (item 19 above)	\$ <u>7008.49</u>	27. Normal tax (6% of item 26)	\$ <u>285.96</u>
21. Less: Personal exemption. (From Schedule D-1)	\$ <u>1200.00</u>	28. Surtax on item 23. (See Instruction 28)	<u>82.70</u>
22. Credit for dependents. (From Schedule D-2)	<u>350.00</u>	29. Total (item 27 plus item 28)	\$ <u>1457.16</u>
	<u>1550.00</u>	30. Total tax (Item 29 or line 16, Schedule F)	
23. Balance (surtax net income)	\$ <u>5458.49</u>	31. Less: Income tax paid at source	
24. Less: Item 5 (a) above.		32. Income tax paid to a foreign country or U. S. possession. (Attach Form 1116)	
25. Earned income credit. (From Schedule E-1 or E-2)	<u>700.85</u>		
	<u>700.85</u>		
26. Balance subject to normal tax	\$ <u>4757.64</u>	33. Balance of tax (Item 30 minus items 31 and 32)	\$ _____

I/we declare, under the penalties of perjury, that this return (including any accompanying schedules and statements) has been examined by me/us, and to the best of my/our knowledge and belief is a true, correct, and complete return made in good faith, for the taxable year stated, pursuant to the Internal Revenue Code and the regulations issued under authority thereof.

Signature of taxpayer (other than taxpayer or agent) preparing return: Alfred V. Petersen Date: 3/13/43

Signature of taxpayer: _____ Date: _____

name of firm or employer, if any: _____ (If this is a joint return, made by: _____)

Schedule A.—INTEREST ON GOVERNMENT OBLIGATIONS, ETC. (See Instruction 5)

Page 2

1. Obligations or securities	2. Amount owned at end of year including your proportionate share of such obligations held by estate, trust, partner, share, or common trust funds	3. Interest received or accrued during the year	4. Amount of principal, interest on which is exempt from taxation	5. Interest on amount in excess of exemption, and dividends subject to surtax only
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or United States possessions	\$	\$	All	XXXXXX
(b) Obligations issued prior to March 1, 1941, under Federal Farm Loan Act, or under such Act as amended			All	XXXXXX
(c) Obligations of United States issued on or before September 1, 1917			All	XXXXXX
(d) Treasury Notes issued prior to December 1, 1940, Treasury Bills and Treasury Certificates of Indebtedness issued prior to March 1, 1941			All	XXXXXX
(e) United States Savings Bonds and Treasury Bonds issued prior to March 1, 1941			\$5,000	\$
(f) Obligations of instrumentalities of the United States (other than obligations to be reported in (b) above) issued prior to March 1, 1941			None	
(g) Dividends on share accounts in Federal savings and loan associations in case of shares issued prior to March 28, 1942	XXXXXXXXXX	XX XXXXXXXX	XX	XX
(h) Total (enter as item 5 (e), page 1)				\$

(f) Treasury Notes issued on or after December 1, 1940, and obligations issued on or after March 1, 1941, by the United States or any agency or instrumentality thereof (enter amount of interest as item 5 (b), page 1) \$

Amount owned at end of year

Interest received or accrued during the year (subject to normal tax and surtax) \$

Schedule B.—INCOME FROM RENTS AND ROYALTIES. (See Instruction 6)

1. Kind of property	2. Amount	3. Depreciation or depletion (attach schedule)	4. Repairs (explain below)	5. Other expenses (itemize below)	6. Net profit (column 2 minus sum of columns 3, 4, and 5) (enter as item 6, page 1)
	\$	\$	\$	\$	\$

Explanation of deductions claimed in column 4 and 5

Schedule C.—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 12, 13, 14, 15, 16, AND 17

1. Item No.	2. Explanation	3. Amount	4. Item No. (Continued)	5. Explanation (Continued)	6. Amount (Continued)
12	Prod. Gross & Overseas Trans. Fund	4500	19	State Income Tax	2912
13	Hel. Gross & Trans. Fund	29953	19	Telephone Service & Sales	573
14	Auto & used car tax	1250	19	Gasoline Tax	1370
15	Property Taxes	11973	15	Tractor car motor	5120

Schedule D.—EXPLANATION OF CREDITS CLAIMED IN ITEMS 21 AND 22. (See Instructions 21 and 22)

(1) Personal Exemption			(2) Credit for Dependents		
Status	Number of months during the year in each status	Credit claimed	Name of dependent and relationship	Number of months during the year	Credit claimed
				Under 18 years old	18 years or over
Single, or married not living with husband or wife, and not head of family		\$	Harry Ross	12	3500
Married and living with husband or wife	12	1200 00			
Head of family (explain below)					
			Reason for support if 18 years or over		

Schedule E.—COMPUTATION OF EARNED INCOME CREDIT. (See Instruction 25)

(1) If your net income is \$3,000 or less, use only this part of schedule	(2) If your net income is more than \$3,000, use only this part of schedule
Net income (item 19, page 1) \$	Earned net income (not more than \$14,000) \$ 7500 00
Earned income credit (10% of net income, above)	Net income (item 19, page 1) 7000 00
	Earned income credit (10% of earned net income or 10% of net income, above, whichever amount is smaller, but not enter less than \$300) 700 85

QUESTIONS

1. Did you file a return for any prior year? Yes If so, what was the latest year? 1941 To which Collector's office was it sent? Portland, Oregon

as made for the current year, state:

and or wife

tion, if any, claimed thereon

e to which it was sent

turn was prepared on the cash ✓ or accrual basis

4. Was the rate of your salary or wages increased or decreased after October 3, 1942, and before the end of your taxable year? No (Yes or No)

5. Did you receive during your taxable year any amount claimed to be non-taxable other than H)? No amount of such income

6. Did you at any time during the year own any stock of a foreign corporation (other than a foreign corporation owned by a partnership in which you are not a partner) which was not listed on the statement of assets and liabilities attached to your return?

UNITED STATES
INDIVIDUAL INCOME AND VICTORY TAX RETURN

Page 1
1943

OPTIONAL FORM 1040A MAY BE FILED INSTEAD OF THIS FORM IF GROSS INCOME IS REPORTED ON THE CASH BASIS FOR THE CALENDAR YEAR, IS NOT MORE THAN \$5,000, AND CONSISTS WHOLLY OF SALARY, WAGES, OTHER COMPENSATION FOR PERSONAL SERVICES, DIVIDENDS, INTEREST OR ANNUITIES

FOR CALENDAR YEAR 1943

or fiscal year beginning _____, 1943, and ending _____, 1944

PRINT NAME AND ADDRESS PLAINLY. (See Instructions C)

ALFRED V. PETERSEN

(Please) (Use given names of both husband and wife, if this is a joint return)

624 S. E. 52nd Avenue

(Street and number, or rural route)

Portland 15,

Oregon

(City or town)

(State)

Occupation Const. Supt.

Social Security number, if any

540-03-9006

(Do not use space)

File No. 908563

Serial No.

Oregon

WITH AFFIDAVIT

COMPUTATION OF NET INCOME

INCOME		Column 1 Income Tax Net Income	Column 2 Victory Tax Net Income
1. Salary, Wages, and Compensation (See Instructions A and B)	Employer's Name Ross B. Hammond Co.	\$ 7,500.00	\$ 7,500.00
2. Dividends	City and State Portland 8, Oregon		
3. Interest on corporation bonds, bank deposits, notes, etc.			
4. Interest on Government obligations, etc.: (a) From line A (8), Schedule A (b) From line B (5) and (3), Schedule A			
5. Annuities			
6. (a) Net gain (or loss) from sale or exchange of capital assets. (From Schedule B) (b) Net gain (or loss) from sale or exchange of property other than capital assets. (From Schedule B)			
7. Rents and royalties. (From Schedule C (1))			
8. Net profit (or loss) from business or profession. (From Schedule C (2)) (State total receipts, from line 1, Schedule C (2) \$ _____)			
9. Income (or loss) from partnerships; fiduciary income; and other income. (From Schedule C (3))			
10. Total income in items 1 to 9		\$ 7,515.32	\$ 7,515.32
DEDUCTIONS			
11. Contributions. (Explain in Schedule D)		\$ 27.00	XXXXXX XX
12. Interest. (Explain in Schedule E) (See Instructions 12 and 16 for Victory Tax deductions)		217.54	XXXXXX XX
13. TAXES. (Explain in Schedule F) (See Instructions 13 and 16 for Victory Tax deductions)		403.49	XXXXXX XX
14. Losses from fire, storm, shipwreck, or other casualty, or theft. (Explain in Schedule G)		86.20	XXXXXX XX
15. Medical, dental, etc., expenses. (Explain in Schedule H)			XXXXXX XX
16. Other deductions authorized by law. (Explain in Schedule I)			XXXXXX XX
17. Total deductions in items 11 to 16		\$ 734.23	\$ 734.23
18. Income Tax net income (item 10, col. 1, less item 17, col. 1)		\$ 6,780.99	XXXXXX XX
19. Victory Tax net income (item 10, col. 2, less item 17, col. 2)		XXXXXX XX	\$ 7,515.32

INCOME AND VICTORY TAX

20. Unpaid balance of 1943 Income and Victory Tax (from line 22, page 4)	\$ 32.13
21. You may postpone, until not later than March 15, 1945, payment of the amount you owe up to one-half of item 19 (c), page 4. Enter the amount postponed. (For persons whose surtax net income for 1942 or 1943 exceeded \$20,000, see Schedule L-2)	
22. Amount paid with this return (item 20 less item 21)	\$ 32.13
23. Refund or Credit	
If the total of your payments (line 21 (d) on page 4) is larger than your tax (line 20 on page 4), enter the difference. Indicate by a check mark (✓) what you want done with this overpayment: Refund it to me <input type="checkbox"/> . Apply it on my 1944 estimated tax <input type="checkbox"/> .	

I declare under the penalties of perjury that this return (including any accompanying schedule and statement) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return.

Signature of person (other than taxpayer or agent) preparing return (Date) Signature of taxpayer (Date)

1. Name and Address of Organization	2. Amount	1. To Whom Paid	2. Amount
Portland United War Chest	\$ 15.00	Prudential Insurance Co.	\$ 213.01
Infantile Paralysis Fund	7.00	Metropolitan Insurance Co.	4 63
Tuberculosis Fund	5.00		
Total (Enter as item 11, page 1, subject to 15% limitation).	\$ 27.00	Total (Enter as item 12, page 1)	\$ 217.64

Schedule C.—LOSSES AND OTHER DEDUCTIONS. (See Instructions 14 and 15)

1. Nature	2. Amount	3. Item No.	4. Explanation	5. Amount
Motor Vehicle Tax & License	\$ 10.00	14	Overcoat stolen	\$ 35.00
Telephone & Telegraph	7.93	14	Frozen motor on vehicle	51.20
State Income Tax	253.76			86.20
Property Taxes	131.80			
Total (Enter as item 13, page 1).	\$ 403.49			

1. Name and Address of Person to Whom Payments Were Made

[illegible]

(1) Personal Exemption

(1) Personal Exemption			(2) Credit for Dependents			
Status	Number of months during the year in each status	Credit claimed	Name of dependent and relationship	Number of months during the year		Credit claimed (Head of a family may not claim credit for dependent used as co-head of a family)
				Under 18 years old	18 years or over	
Single, or married and not living with husband or wife, and not head of family.			Son	12		\$ 350.00
Married and living with husband or wife.	12	\$ 1,200.00				
Head of a family (explain below)						
			Reason for support if 18 years or over			

(t) If your net income is \$3,000 or LESS, use only this part of schedule

Net income (item 18, page 1).....	\$.....
Earned income credit (10% of net income, above).....	.....

(X) If your net income is MORE than \$3,000, use only this part of schedule

Earned net income (not more than \$14,000).....	\$ 7,500.00
Net income (item 18, page 1).....	6,780.89
Earned income credit (10% of earned net income or 10% of net income, above, whichever amount is smaller, but do not enter less than \$300).....	678.10

1. Did you file a return for any prior year? YES If so, what was the latest year? 1942 To which Collector's office was it sent? Same

2. If you claimed credit for tax paid in line 21 (c), page 4, to which Collector's office was your declaration sent? Same

3. If separate return was made for the current year, state:

(a) Name of husband or wife _____

(b) Personal exemption, if any, claimed thereon _____

(c) Collector's office to which was sent _____

4. Check whether this return was prepared on the cash ☒ or accrual ☐ basis.

5. Was the rate of your salary or wages increased or decreased during your taxable year? (Yes or No) NO

6. Did you receive during your taxable year any amount claimed to be non-taxable (see General Instruction 1)? NO If so, attach schedule showing source, nature, and amount of such income.

7. Did you at any time during your taxable year own directly or indirectly any stock of a foreign corporation, or a personal holding company as defined by section 501 of the Internal Revenue Code? NO If so, attach statement required by General Instruction L.

COMPUTATION OF INCOME AND VICTORY TAX. (See Tax Computation Instructions)

Page 4

1. Income Tax net income (item 18, page 1)		\$ 6,780.99
2. Less: Personal exemption. (From Schedule L-1)	\$ 1,200.00	
3. Credit for dependents. (From Schedule L-2)	350.00	1,550.00
4. Balance (surtax net income)		\$ 5,230.99
5. Less: Certain interest on Government obligations (item 4 (a), page 1)		
6. Earned income credit. (From Schedule J-1) or J-2	678.10	678.10
7. Balance subject to normal tax		\$ 4,552.89
8. Normal tax (6% of line 7)		\$ 273.17
9. Surtax on amount in line 4. (See Surtax Table, page 3 of Instructions)		826.20
10. Total Income Tax (line 8 plus line 9). (If Schedule B is used and alternative tax computation made, enter line 16, Schedule B)		\$ 1,099.37
11. Less: Income Tax paid to a foreign country or U. S. possession. (Attach Form 1114)		
12. BALANCE OF INCOME TAX		\$ 1,099.37
13. NET VICTORY TAX (line 6 of Victory Tax Schedule, below)		199.85
14. Total of lines 12 and 13		\$ 1,299.22
15. Income Tax paid at source on tax-free covenant bond interest. (See Footnote 1)		
16. Line 14 less line 15		\$ 1,299.22
17. Income Tax for 1942. (See Statement, Form 1125, from Collector) (First, see page 4 of Instructions)		\$ 1,157.16
18. Enter line 16 or 17 whichever is LARGER. (Members of the armed forces see page 4 of Instructions)		\$ 1,299.22
19. FORGIVENESS FEATURE (Don't fill in (a), (b), and (c) below, if either line 16 or 17 is \$50 or less):		
(a) Enter line 16 or 17, whichever is SMALLER	\$ 1,157.16	
(b) Enter \$50 or three-fourths of (a), immediately above, whichever is LARGER. This is the FORGIVEN part of the tax	\$ 867.87	
(c) Enter the UNFORGIVEN part of the tax which is the BALANCE (subtract (b) from (a)). (See Footnote 2)		289.29
20. TOTAL INCOME AND VICTORY TAX. (Total of lines 18 and 19 (c))		\$ 1,588.51
21. Less: (a) Income and Victory Tax withheld by employer	\$ 977.80	
(b) Income Tax paid on 1942 income	5.78	58
(c) Tax paid on 1943 income on account of Declaration of Estimated Tax		
(d) Total payments		1,556.38
22. UNPAID BALANCE OF INCOME AND VICTORY TAX. (If line 20 is larger than line 21 (d), enter the difference here and also as item 20, page 1; if not, see item 23, page 1)		\$ 32.13

FOOTNOTE 1.—If you claim a credit in line 15, disregard lines 19 (a) and (b), complete Schedule L-1 on page 4 of Instructions, and enter result in line 10 of Attach completed schedule.

FOOTNOTE 2.—If your current net income for 1942 or 1943 exceeded \$20,000, requiring you to complete Schedule L-2, enter here the amount shown on line 22 of 27 of such schedule, \$ _____ and increase 19 (c) by such amount.

Schedule K—VICTORY TAX. (See Tax Computation Instructions)

1. Victory Tax net income (item 19, page 1)		\$ 7,515.32
2. Less: Specific exemption (\$624 if return reports income of only one person; otherwise, see Instructions, page 5)		624.00
3. Income subject to Victory Tax (line 1 less line 2)		\$ 6,891.32
4. Victory Tax before credit (5% of line 3)		\$ 344.57
5. Victory Tax credit:		
(a) Single person, or married person not living with husband or wife: 25% (plus 2% for each dependent) of line 4, but not more than \$500 (plus \$100 for each dependent)		\$ _____
(b) Married person living with husband or wife if separate returns are filed: 40% (plus 2% for each dependent) of line 4, but not more than \$500 (plus \$100 for each dependent)		\$ _____
(c) Married person living with husband or wife if only one return or a joint return is filed, or head of a family: 40% (plus 2% for each dependent) of line 4; but not more than \$1,000 (plus \$100 for each dependent). (See Schedule L-1-2), for exclusion of one dependent by head of a family)		\$ 144.72
6. Net Victory Tax (line 4 less line 5). (Enter in line 13, above)		\$ 199.85

Schedule L.—To be used only by individuals whose surtax net income for 1942 or 1943 exceeded \$20,000. Schedule to determine whether Section 6 (c) of the Current Tax Payment Act of 1943 is applicable.

1. Surtax net income for 1942 (Item 23, Form 1040 (1942))	\$ _____
2. Surtax net income for 1943 (line 4, above)	\$ _____
3. Surtax net income for base year, \$ _____ plus \$20,000: \$ _____ (Check year used: 1937 ____; 1938 ____; 1939 ____; 1940 ____)	

If either line 1 or 2 is greater than line 3, separate Schedule L-2 should be secured from the collector and filed with and as a part of this return.

Note.—If a joint return is filed for either 1942 or 1943 and separate returns for the other of such years, enter the aggregate of the separate surtax net incomes for the separate return year. The surtax net income to be entered in line 3 shall be determined in the same manner as the surtax net income entered in line 1 or 2, whichever is the lesser.

15-4

STATEMENT OF TAX LIABILITY AND PAYMENTS ON ACCOUNT OF INDIVIDUAL INCOME TAX RETURN FOR 1942

To Federal Income Taxpayer named below: For the purpose of assisting you in the preparation of your 1943 income tax return, there is shown hereon certain information taken from the records of this office pertaining to your Federal income tax account for the taxable year 1942. This information must be entered on your 1943 return, and this Statement should be attached to the return in support of the entries. Do not make any changes in this Statement. If the figures do not agree with your records, return the Statement at once with a letter of explanation.

COLLECTOR OF INTERNAL REVENUE, PORTLAND, OREGON

ALFRED V PETERSEN
625 S E 52ND
PORTLAND ORE

29723

Total tax shown on your 1942 income
tax return—

\$ 1157 16

Paid at time of filing and as result of
bills subsequently issued—

\$ 578 58

THIS STATEMENT SHOULD BE ATTACHED TO YOUR 1943 INCOME TAX RETURN WHEN FILED WITH COLLECTOR OF INTERNAL REVENUE

UNITED STATES
INDIVIDUAL INCOME TAX RETURN

Page 1
1942

OPTIONAL FORM 1040A MAY BE FILED INSTEAD OF THIS FORM IF GROSS INCOME IS REPORTED ON THE CASH BASIS FOR THE CALENDAR YEAR. IS NOT MORE THAN \$3,000, AND CONSISTS WHOLLY OF SALARY, WAGES, OTHER COMPENSATION FOR PERSONAL SERVICES, DIVIDENDS, INTEREST OR ANNUITIES.

FOR CALENDAR YEAR 1942

or fiscal year beginning Jan. 1., 1942, and ending Jan. 1, 1943

PRINT NAME AND ADDRESS PLAINLY. (See Instruction C)

Henry M. and Elizabeth B. Mason

(Name) (Use given names of both husband and wife, if this is a joint return)
2856 S. W. Georgian Place

(Street and number, or rural route)

Portland Multnomah Oregon

(Post office)

(County)

(State)

Construction Sup'ts. 543-10-7215

(Occupation)

(Social Security number, if any)

Ross B. Hammond Co., Spalding Building.

(Name and address of employer)

Portland, Oregon

(If more than one employer, attach statement showing name and address and amount received from each)

(Do not use these spaces)

File Code 44

Serial No. 19869

District 10

(Cashier's Stamp)

Cash—Check—M. O.

First Payment

Item and Instruction No.	INCOME	Amount	Deductible Expenses (Attach itemized statement)
1. Salaries and other compensation for personal services.	\$10,000.00	\$ 10,000 00	
2. Dividends:			
3. Interest on bank deposits, notes, etc.		202 05	
4. Interest on corporation bonds, etc.	\$	\$	Less amortizable bond premium
5. Interest on Government obligations, etc.:			
(a) From line (1), Schedule A	\$	\$	
(b) From line (1), Schedule A	\$	\$	
6. Rents and royalties. (From Schedule B)		17 24	
7. Annuities			
ITEMS 8, 9, AND 10, BELOW (AND PAGES 3 AND 4) NEED NOT BE CONSIDERED UNLESS YOU HAVE INCOME (OR LOSSES) IN ADDITION TO ITEMS ABOVE.			
8. (a) Net gain (or loss) from sale or exchange of capital assets. (From Schedule F)			
(b) Net gain (or loss) from sale or exchange of property other than capital assets. (From Schedule G)			
9. Net profit (or loss) from business or profession. (From Schedule H)			
(State total receipts, from line 1, Schedule H, \$)			
10. Income (or loss) from partnerships; fiduciary income; and other income. (From Schedule I)			
11. Total income in items 1 to 10		\$ 10,202 05	
DEDUCTIONS			
12. Contributions paid. (Explain in Schedule C)		\$ 22 00	
13. Interest. (Explain in Schedule C)			
14. Taxes. (Explain in Schedule C)		814 47	
15. Losses from fire, storm, shipwreck, or other casualty, or theft. (Explain in Schedule C)			
16. Bad debts. (Explain in Schedule C)			
17. Other deductions authorized by law. (Explain in Schedule C)			
18. Total deductions in items 12 to 17		836 47	
19. Net income (item 11 minus item 18)		\$ 9,365 58	

COMPUTATION OF TAX

20. Net income (item 19 above)	\$ 9,365 58	27. Normal tax (6% of item 26)	\$ 391 74
21. Less: Personal exemption. (From Schedule D-1)	\$ 1,200 00	28. Surtax on item 23. (See Instruction 28)	1,331 74
22. Credit for dependents. (From Schedule D-2)	700 00	29. Total (item 27 plus item 28)	\$ 1,723 48
23. Balance (surtax net income)	\$ 7,465 58	30. Total tax (Item 29 or line 16, Schedule F)	\$
24. Less: Item 5 (a) above	\$	31. Less: Income tax paid at source	\$
25. Earned income credit. (From Schedule E-1 or E-2)	936 58	32. Income tax paid to a foreign country or U. S. possession. (Attach Form 1116)	\$
26. Balance subject to normal tax	\$ 6,529 02	33. Balance of tax (Item 30 minus items 31 and 32)	\$ 1,723 48

I/we declare, under the penalties of perjury, that this return (including any accompanying schedules and statements) has been examined by me/us and to the best of my/our knowledge and belief is a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Internal Revenue Code and the regulations issued under authority thereof.

(Signature of person (other than taxpayer or agent) preparing return)

(Date)

(Name of firm or employer, if any)

(If this is a
A return ma

Henry M. Mason 3/1/43

Schedule A.—INTEREST ON GOVERNMENT OBLIGATIONS, ETC. (See Instruction 5)

1. Obligations or securities	2. Amount owned at end of year including your proportionate share of such obligations held by estates, trusts, partnerships, or common trust funds	3. Interest received or accrued during the year	4. Amount of principal interest on which a receipt from taxpayer	5. Interest on amount of principal interest and dividends (subject to normal tax and surtax)
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or United States possessions	\$	\$	All	XXXXXX
(b) Obligations issued prior to March 1, 1941, under Federal Farm Loan Act, or under such Act as amended			All	XXXXXX
(c) Obligations of United States issued on or before September 1, 1917			All	XXXXXX
(d) Treasury Notes issued prior to December 1, 1940, Treasury Bills and Treasury Certificates of Indebtedness issued prior to March 1, 1941			All	XXXXXX
(e) United States Savings Bonds and Treasury Bonds issued prior to March 1, 1941			All	XXXXXX
(f) Obligations of instrumentalities of the United States (other than obligations to be reported in (b) above) issued prior to March 1, 1941			\$5,000	\$
(g) Dividends on share accounts in Federal savings and loan associations in case of shares issued prior to March 28, 1942	XXXXXX	XXXXXX	None	XXXX
(h) Total (enter as item 5 (a), page 1)				\$
(i) Treasury Notes issued on or after December 1, 1940, and obligations issued on or after March 1, 1941, by the United States or any agency or instrumentality thereof (enter amount of interest as item 5 (b), page 1)		Amount owned at end of year	Interest received or accrued during the year (subject to normal tax and surtax)	

Schedule B.—INCOME FROM RENTS AND ROYALTIES. (See Instruction 6)

1. Kind of property	2. Amount	3. Depreciation or depletion (attach schedule)	4. Repairs (explain below)	5. Other expenses (itemize below)	6. Net profit (column 2 minus sum of columns 3, 4 and 5) (enter as item 6, page 1)
House—Warrendale	135 00	150 00			
" Cannon Beach	190 00	150 00	16 66	27 23	

Explanation of deductions claimed in columns 4 and 5: Roof repairs 16.66, water 7.00, light 7.43, wood 13.50 all in connection with tenant occupancy only.

Schedule C.—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 12, 13, 14, 15, 16, AND 17

1. Item No.	2. Explanation	3. Amount	1. Item No. (Continued)	2. Explanation (Continued)	3. Amount (Continued)
12	Community Chest	15 00	14	State Income Tax	260 57
	Red Cross	5 00		Property Tax - Home	437 29
	T. B. Seals	2 00		" Warrendale	50 28
				" Cannon Beach	66 33

Schedule D.—EXPLANATION OF CREDITS CLAIMED IN ITEMS 21 AND 22. (See Instructions 21 and 22)

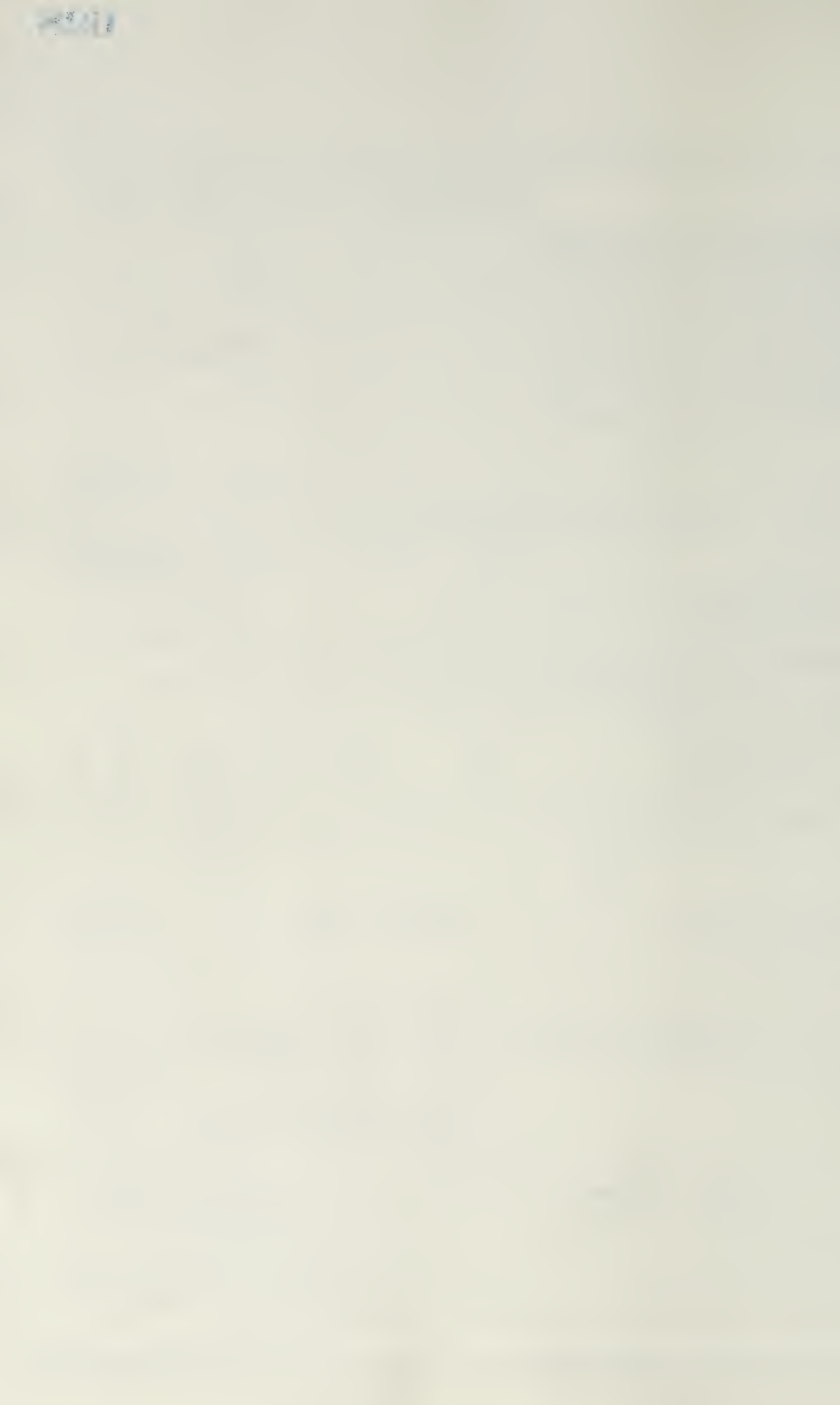
(1) Personal Exemption			(2) Credit for Dependents		
Status	Number of months during the year in each status	Credit claimed	Name of dependent and relationship	Number of months during the year Under 18 years old 18 years or over	Credit claimed
Single, or married and not living with husband or wife, and not head of family		\$	Henry R. Mason	12	350 00
Married and living with husband or wife	12	1,200 00	Thomas G. Mason	12	350 00
Head of family (explain below)					
			Reason for support if 18 years or over		

Schedule E.—COMPUTATION OF EARNED INCOME CREDIT. (See Instruction 25)

(1) If your net income is \$3,000 or less, use only this part of schedule		(2) If your net income is more than \$3,000, use only this part of schedule	
Net income (item 19, page 1)	\$	Earned net income (not more than \$14,000)	\$ 10,000 00
Earned income credit (10% of net income, above)		Net income (item 19, page 1)	9,365 58
		Earned income credit (10% of earned net income or 10% of net income, above, whichever amount is smaller, but do not enter less than \$300)	936 58

QUESTIONS

- Did you file a return for any prior year? **Yes** If so, what was the latest year? **1941** To which Collector's office was it sent? **Portland, Oregon**
- If separate return was made for the current year, state:
 - Name of husband or wife
 - Personal exemption, if any, claimed thereon
 - Collector's office to which it was sent
- Check whether this return was prepared on the cash ☒ or accrual ☐ basis.
- Was the rate of your salary or wages increased or decreased after October 3, 1942, and before the end of your taxable year? **No** (Yes or No)
- Did you receive during your taxable year any amount claimed to be non-taxable other than interest reported in Schedule A (see Instruction H)? **No** If so, attach schedule showing source, nature, and amount of such income.
- Did you at any time during your taxable year own directly or indirectly any stock of a foreign corporation or a personal holding company as defined by section 501 of the Internal Revenue Code? **No** If so, attach statement required by Instruction K.



UNITED STATES
INDIVIDUAL INCOME AND VICTORY TAX RETURN

Page 1
1943

OPTIONAL FORM 1040A MAY BE FILED INSTEAD OF THIS FORM IF GROSS INCOME IS REPORTED ON THE CASH BASIS FOR THE CALENDAR YEAR, IS NOT MORE THAN \$3,000, AND CONSISTS WHOLLY OF SALARY, WAGES, OTHER COMPENSATION FOR PERSONAL SERVICES, DIVIDENDS, INTEREST OR ANNUITIES

FOR CALENDAR YEAR 1943

or fiscal year beginning Jan. 1, 1943, and ending Jan. 1, 1944

PRINT NAME AND ADDRESS PLAINLY. (See Instruction C)

Henry M. & Elizabeth R. Mason
(Name) (Use given names of both husband and wife, if this is a joint return)
1833 S.W. Laurel St.
(Street and number, or rural route)
Portland Oregon
(City or town) (State)

Occupation Construction Supt. Social Security number, if any 513-12-7215

(Do not use these spaces)

File Code 235
Serial No. 303837
Oregon
District

(Cashier's Stamp)
RECEIVED
MAR 11 1944
DIST. OREGON

COMPUTATION OF NET INCOME

INCOME		Column 1 Income Tax Net Income	Column 2 Victory Tax Net Income
1. Salary, Wages, and Compensation for Personal Services	Ross B. Hammond Co. Portland Ore.	\$10.000.00	\$10.000.00
(Members of armed forces see Instruction I)			
Total		\$10.000.00	\$10.000.00
Less: Deductible expenses (See Instructions 12 and 16 for Victory Tax deduction)			
Compensation after deductible expenses		\$10.000.00	\$10.000.00
2. Dividends			
3. Interest on corporation bonds and deposits, etc.		11.21	11.21
4. Interest on Government obligations, etc. (From line A (8), Schedule A)			XXXXXX XX
(From line B (5) and (3), Schedule A)			
5. Annuities			
6. (a) Net gain (or loss) from sale or exchange of capital assets. (From Schedule B)			XXXXXX XX
(b) Net gain (or loss) from sale or exchange of property other than capital assets. (From Schedule B)			
7. Rents and royalties. (From Schedule C (1))		29.32	29.32
8. Net profit (or loss) from business or profession. (From Schedule C (2))			
(State total receipts, from line 1, Schedule C (2) \$)			
9. Income (or loss) from partnerships; fiduciary income; and other income. (From Schedule C (3))			
10. Total income in items 1 to 9		\$10.100.53	\$10.100.53
DEDUCTIONS			
11. Contributions. (Explain in Schedule D)		\$ 00.00	XXXXXX XX
12. Interest. (Explain in Schedule E) (See Instructions 12 and 16 for Victory Tax deduction)			XXXXXX XX
13. Taxes. (Explain in Schedule F) (See Instructions 13 and 14 for Victory Tax deduction)		690.51	XXXXXX XX
14. Losses from fire, storm, shipwreck, or other casualty, or theft. (Explain in Schedule G)			XXXXXX XX
15. Medical, dental, etc., expenses. (Explain in Schedule H)			XXXXXX XX
16. Other deductions authorized by law. (Explain in Schedule G)			\$ 63.66
17. Total deductions in items 11 to 16		\$ 770.51	\$ 63.66
18. Income Tax net income (item 10, col. 1, less item 17, col. 1)		\$ 9,330.02	XXXXXX XX
19. Victory Tax net income (item 10, col. 2, less item 17, col. 2)		XXXXXX XX	\$ 10,036.87
INCOME AND VICTORY TAX			
20. Unpaid balance of 1943 Income and Victory Tax (from line 22, page 4)			\$ 169.20
21. You may postpone, until not later than March 15, 1945, payment of the amount you owe up to one-half of item 19 (c), page 4. Enter the amount postponed. (For persons whose surtax net income for 1942 or 1943 exceeded \$20,000, see Schedule L-2)			
22. Amount paid with this return (item 20 less item 21)			\$ 169.20
23. Refund or Credit	If the total of your payments (line 21 (d) on page 4) is larger than your tax (line 20 on page 4), enter the difference. Indicate by a check mark (✓) what you want done with this overpayment: Refund it to me <input type="checkbox"/> ; Apply it on my 1944 estimated tax <input type="checkbox"/> .		

I declare under the penalties of perjury, that this return (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct, and complete return.

(Signature of person (other than taxpayer or agent) preparing return) (Date) Henry M. Mason 3/10/44

(Signature of taxpayer) Elizabeth R. Mason

(If this is a joint return (not made by agent), it must be signed by both husband and wife. A return may be signed by either if the other is deceased.)

THOSE WHOSE INCOME IS SOLELY FROM SALARIES MAY DISREGARD THIS PAGE Page 2

Schedule A.—INTEREST AND OWNERSHIP OF TAXABLE GOVERNMENT OBLIGATIONS, ETC. (See Instruction 4)

1. Obligations or securities	2. Amount owned at end of year (per value except for United States savings bonds)	3. Interest
A. Subject to surtax only:		
(1) United States savings bonds (cost price) and Treasury bonds issued prior to March 1, 1941.....	\$.....	\$.....
(2) Less: Wholly tax-exempt portion, principal amount not in excess of \$5,000.....	XXXXXXXXXX xx	.....
(3) Net taxable interest.....	XXXXXXXXXX xx	\$.....
(4) Obligations of instrumentalities of the United States issued prior to March 1, 1941 (other than Federal land banks, Federal intermediate credit banks, or joint stock land banks).....	\$.....	.....
(5) Dividends on share accounts in Federal savings and loan associations in case of shares issued prior to March 28, 1942.....	XXXXXXXXXX xx	.....
(6) Subtotal for interest (total of lines 3, 4, and 5).....	XXXXXXXXXX xx	\$.....
(7) Less: Amortizable bond premium. (See Instruction 16).....	XXXXXXXXXX xx	.....
(8) Balance of interest. (Enter as item 4 (a), column 1, page 1).....	XXXXXXXXXX xx	\$.....
B. Subject to normal tax, surtax, and Victory Tax:		
(1) United States savings bonds issued on or after March 1, 1941 (cost price).....	\$.....	\$.....
(2) Other obligations issued on or after March 1, 1941, by the United States or any instrumentality thereof (include also Treasury notes issued on or after December 1, 1940).....	.....	.....
(3) Subtotal for interest (total of lines 1 and 2). (Enter as item 4 (b), column 2, page 1).....	XXXXXXXXXX xx	\$.....
(4) Less: Amortizable bond premium. (See Instruction 16).....	XXXXXXXXXX xx	.....
(5) Balance of interest. (Enter as item 4 (b), column 1, page 1).....	XXXXXXXXXX xx	\$.....

Schedule B.—Schedule B (Form 1040) is a separate sheet and should be used in reporting gains and losses from sales or exchanges of capital assets and property other than capital assets, and filed with and as a part of this return.

Schedule C(1).—INCOME FROM RENTS AND ROYALTIES. (See Instruction 7)

1. Kind of property	2. Amount	3. Depreciation or depletion (explain below)	4. Repairs (explain below)	5. Other expenses (itemize below)	6. Net profit (column 2 less sum of columns 3, 4, and 5) (enter as item 7, page 1)
House - Cavanaugh Beach	\$ 335.00	\$ 150.00	\$ 35.50	\$ 60.18	\$ 89.32

Schedule C(2).—PROFIT (OR LOSS) FROM BUSINESS OR PROFESSION. (See Instruction 8)

(State (1) nature of business; (2) business name)

1. Total receipts		OTHER BUSINESS DEDUCTIONS		3.
COST OF GOODS SOLD (To be used where inventories are an income-determining factor) (Enter, the letters "C," or "C or M," on lines 2 and 8 if inventories are valued at either cost, or cost or market, whichever is lower)		11. Salaries and wages not included as "Labor" (do not deduct compensation for yourself).....		\$.....
2. Inventory at beginning of year.....	\$.....	12. Interest on business indebtedness.....		\$.....
3. Merchandise bought for sale.....	.....	13. Taxes on business and business property.....		.....
4. Labor.....	.....	14. Losses (explain below).....		.....
5. Material and supplies.....	.....	15. Bad debts arising from sales or services.....		.....
6. Other costs (explain below).....	.....	16. Depreciation, obsolescence, and depletion (explain below).....		.....
7. Total of lines 2 to 6.....	\$.....	17. Rent, repairs, and other expenses (explain below).....		.....
8. Less inventory at end of year.....	.....	18. Amortization of emergency facilities (attach statement).....		.....
9. Net cost of goods sold (line 7 less line 8).....	\$.....	19. Total of lines 11 to 18.....		\$.....
10. Gross profit (line 1 less line 9).....	\$.....	20. Total of lines 9 and 19.....		\$.....
		21. Net profit (or loss) (line 1 less line 20). (Enter as item 8, page 1).....		\$.....

EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN COLUMN 3 AND LINE 16, ABOVE

1. Kind of property (If buildings, state material of which constructed)	2. Date acquired	3. Cost or other basis (Do not include land or other nondepreciable property)	4. Assets fully depreciated in use at end of year	5. Depreciation allowed (or allowable) in prior years	6. Remaining cost or other basis to be recovered	7. Estimated life used in accumulating depreciation	8. Estimated remaining life from beginning of year	9. Depreciation allowable this year
House - wood frame	1936	\$ 3,000.00	\$ 195.00	\$ 1,050.00	\$ 1,950.00	20 yrs.	13 yrs.	\$ 150.00

EXPLANATION OF DEDUCTIONS CLAIMED IN COLUMNS 4 AND 5, AND LINES 6, 14, AND 17, ABOVE

1. Column or Line No.	2. Explanation	3. Amount	1. Column or Line No.	2. Explanation	3. Amount
4	New stove coils and clean electric tank	\$ 35.50	5	Light, water, wood, grass cutting	\$ 60.18

Schedule C(3).—INCOME FROM PARTNERSHIPS, FIDUCIARIES, AND OTHER SOURCES (See Instructions 9, 10, 11, and 12)

Partnership, syndicate, etc.....
Fiduciary.....
Other.....
(See page 1).....

Schedule D.—CONTRIBUTIONS. (See Instruction 11)

Contributions (cont'd) Page 3
Schedule E.—INTEREST. (See Instruction 12)

1. Name and Address of Organization	2. Amount	1. To Whom Paid	2. Amount
Am. Soc. Civil Engineers	\$ 20.00	Community Chest	\$ 15.00
Red Cross	10.00	Ore. T. B. Soc.	2.00
Old Peoples Home	1.00	Yale University	10.00
St. Helens Hall	5.00	Police Pension Fund	2.00
Junior League	15.00		
Total. (Enter as item 11, page 1, subject to 15% limitation).	\$ 66.00	Total. (Enter as item 12, page 1).	\$ 39.00

Schedule F.—TAXES. (See Instruction 13)

Schedule G.—LOSSES AND OTHER DEDUCTIONS. (See Instructions 14 and 16)

1. Nature	2. Amount	1. Item No.	2. Explanation	3. Amount
State Income	\$ 380.43	16	Taxes on property	\$ 63.66
Property Tax Home	216.42		held for production	
" " Warrendale	27.80		of income	
" " Cannon Beach	35.80			
Total. (Enter as item 13, page 1).	\$ 690.51			

Schedule H.—MEDICAL, DENTAL, ETC., EXPENSES. (See Instruction 15)

1. Name and Address of Person to Whom Payments Were Made	2. Approximate Date of Actual Payment	3. Amount
		\$
1. Total medical, dental, etc., expenses actually paid during the year as shown in column 3, above		\$
2. Amount received during the year as compensation for such expenses		
3. Payment for medical care not compensated for during the year (line 1 less line 2)		\$
4. Total income in item 10, page 1	\$	
5. Total deductions claimed in items 11, 12, 13, 14, and 16, page 1	\$	
6. Net income before deduction for medical, dental, etc., expenses (line 4 less line 5)	\$	
7. 5% of line 6		
8. Excess of line 3 over line 7. (Enter as item 15, page 1, subject to maximum limitation.) (See Instruction 15)		\$

Schedule I.—PERSONAL EXEMPTION AND CREDIT FOR DEPENDENTS. (See Tax Computation Instructions)

(1) Personal Exemption			(2) Credit for Dependents		
Status	Number of months during the year in each status	Credit claimed	Name of dependent and relationship	Number of months during the year	Credit claimed (Head of a family may not claim credit for dependent used to qualify him as head of a family)
				Under 18 years old	18 years or over
Single, or married and not living with husband or wife, and not head of family		\$	Sons		
Married and living with husband or wife	12	1,200.00	Henry R.	12	350.00
Head of a family (explain below)			Thomas G.	12	350.00
			James M.	2	58.33
			Reason for support if 18 years or over		758.33

Schedule J.—COMPUTATION OF EARNED INCOME CREDIT. (See Tax Computation Instructions)

(1) If your net income is \$3,000 or LESS, use only this part of schedule		(2) If your net income is MORE than \$3,000, use only this part of schedule	
Net income (item 18, page 1)	\$	Earned net income (not more than \$14,000)	\$ 12,000.00
Earned income credit (10% of net income, above)		Net income (item 18, page 1)	2,230.00
		Earned income credit (10% of earned net income or 10% of net income, above, whichever amount is smaller, but do not enter less than \$300)	933.00

QUESTIONS

- Did you file a return for any prior year? Yes. If so, what was the latest year? Portland, Ore. To which Collector's office was it sent? Portland, Ore.
- If you claimed credit for tax paid in line 21 (c), page 4, to which Collector's office was your declaration sent? Portland, Ore.
- If separate return was made for the current year, state:
 - Name of husband or wife
 - Personal exemption, if any, claimed thereon
 - Collector's office to which it was sent
- Check whether this return was prepared on the cash ☒ or annual ☐ basis.
- Was the rate of your salary or wages increased or decreased during your taxable year? (Yes or No) No
- Did you receive during your taxable year any amount claimed to be non-taxable (see General Instruction 1)? No. If so, attach schedule showing source, nature, and amount of such income.
- Did you at any time during your taxable year own directly or indirectly any stock of a foreign corporation, or a personal holding company as defined by section 501 of the Internal Revenue Code? No. If so, attach statement required by General Instruction 1.

COMPUTATION OF INCOME AND VICTORY TAX. (See Tax Computation Instructions)

Page 4

1. Income Tax net income (item 18, page 1)		\$ 2.330	02
2. Less: Personal exemption. (From Schedule 1-(1))	\$ 1.200	00	
3. Credit for dependents. (From Schedule 1-(2))	7.58	33	
4. Balance (surtax net income)		1.958	33
5. Less: Certain interest on Government obligations (item 4 (a), page 1)	\$		
6. Earned income credit. (From Schedule J-(1) or J-(2))	9.33	00	
7. Balance subject to normal tax		6.438	62
8. Normal tax (6% of line 7)		3.86	32
9. Surtax on amount in line 4. (See Surtax Table, page 3 of Instructions)		1.309	21
10. Total Income Tax (line 8 plus line 9). (If Schedule B is used and alternative tax computation made, enter line 16, Schedule B)		1.625	53
11. Less: Income Tax paid to a foreign country or U. S. possession. (Attach Form 1116)			
12. BALANCE OF INCOME TAX		1.625	53
13. NET VICTORY TAX (line 6 of Victory Tax Schedule, below)	2.57		
14. Total of lines 12 and 13		1.947	27
15. Income Tax paid at source on tax-free covenant bond interest. (See Footnote 1)			
16. Line 14 less line 15		1.947	27
17. Income Tax for 1942. (See Statement, Form 1125, from Collector) (First, see page 4 of Instructions)		1.723	48
18. Enter line 16 or 17 whichever is LARGER. (Members of the armed forces see page 4 of Instructions)		1.947	27
19. FORGIVENESS FEATURE (Don't fill in (a), (b), and (c) below, if either line 16 or 17 is \$50 or less):			
(a) Enter line 16 or 17, whichever is SMALLER	\$ 1.723	48	
(b) Enter \$50 or three-fourths of (a), immediately above, whichever is LARGER. This is the FORGIVEN part of the tax	\$ 1.292	61	
(c) Enter the UNFORGIVEN part of the tax which is the BALANCE (subtract (b) from (a)). (See Footnote 2)		430	87
20. TOTAL INCOME AND VICTORY TAX. (Total of lines 18 and 19 (c))		2.378	14
21. Less: (a) Income and Victory Tax withheld by employer	\$ 1.347	20	
(b) Income Tax paid on 1942 income	8.61	75	
(c) Tax paid on 1943 income on account of Declaration of Estimated Tax			
(d) Total payments		2.208	95
22. UNPAID BALANCE OF INCOME AND VICTORY TAX. (If line 20 is larger than line 21 (d), enter the difference here and also as item 20, page 1; if not, see item 23, page 1)		162	20

FOOTNOTE 1.—If you claim a credit in line 15, disregard lines 19 (a) and (b), complete Schedule L-1 on page 4 of Instructions, and enter result in line 19 (c). Attach completed schedule.

FOOTNOTE 2.—If your surtax net income for 1942 or 1943 exceeded \$20,000, requiring you to complete Schedule L-2, enter here the amount shown on line 10 or 27 of such schedule, \$, and increase 19 (c) by such amount.

Schedule K.—VICTORY TAX. (See Tax Computation Instructions)

1. Victory Tax net income (item 19, page 1)		\$ 10.236	87
2. Less: Specific exemption (\$624 if return reports income of only one person; otherwise, see Instructions, page 3)		713	32
3. Income subject to Victory Tax (line 1 less line 2)		9.523	55
4. Victory Tax before credit (5% of line 3)		4.76	18
5. Victory Tax credit:			
(a) Single person, or married person not living with husband or wife: 25% (plus 2% for each dependent) of line 4, but not more than \$500 (plus \$100 for each dependent)			
(b) Married person living with husband or wife if separate returns are filed: 40% (plus 2% for each dependent) of line 4, but not more than \$500 (plus \$100 for each dependent)			
(c) Married person living with husband or wife if only one return or a joint return is filed, or head of a family: 40% (plus 2% for each dependent) of line 4, but not more than \$1,000 (plus \$100 for each dependent)			
(See Schedule 1-(2), for exclusion of one dependent by head of a family)			
6. Net Victory Tax (line 4 less line 5). (Enter in line 13, above)		2.51	53

Schedule L.—To be used only by individuals whose surtax net income for 1942 or 1943 exceeded \$20,000. Schedule to determine whether Section 6 (c) of the Current Tax Payment Act of 1943 is applicable

1. Surtax net income for 1942 (item 23, Form 1040 (1942))		\$
2. Surtax net income for 1943 (line 4, above)		\$
3. Surtax net income for base year, \$, plus \$20,000: \$, (Check year used: 1937 ; 1938 ; 1939 ; 1940 ;)		\$

If either line 1 or 2 is greater than line 3, separate Schedule L-2 should be secured from the collector and filed with and as a part of this return.

Note.—If a joint return is filed for either 1942 or 1943 and separate returns for the other of such years, enter the aggregate of the separate surtax net incomes for the separate return year. The surtax net income to be entered in line 3 shall be determined in the same manner as the surtax net income entered in line 1 or 2, whichever is the lesser.

Form 1042
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

STATEMENT OF TAX LIABILITY AND PAYMENTS ON ACCOUNT
OF INDIVIDUAL INCOME TAX RETURN FOR 1942

To Federal Income Taxpayer named below: For the purpose of assisting you in the preparation of your 1943 income tax return, there is shown hereon certain information taken from the records of this office pertaining to your Federal income tax account for the taxable year 1942. This information must be entered on your 1943 return, and this Statement should be attached to the return in support of the entries. Do not make any changes in this Statement. If the figures do not agree with your records, return the Statement at once with a letter of explanation.

COLLECTOR OF INTERNAL REVENUE, PORTLAND, OREGON

Total tax shown on your 1942 income
tax return—

\$ 1723 48

Paid at time of filing and as result of
bills subsequently issued—

\$ 861 74

HENRY M MASON &
ELIZABETH R MASON
2656 S W GEORGIAN PL
PORTLAND ORE

19869

THIS STATEMENT SHOULD BE ATTACHED TO YOUR 1943 INCOME TAX RETURN WHEN FILED WITH COLLECTOR OF INTERNAL REVENUE

GPO ☆ 16-50089-1

E-5

DEFENDANT'S EXHIBIT No. 28

Ross B. Hammond Co.
Building Construction
1214 Spalding Building
Portland, Oregon

[Stamped]: Received Mar. 7, 1938. Rules and Regulations Division.

March 3rd, 1938.

Commissioner of Internal Revenue,
Internal Revenue Building,
Washington, D. C.

Sir:

In accordance with requirements of Article 42-4, Regulations 94, application is hereby made for permission to account for profits upon contracts performed by this company, upon the basis of a percentage of contracts completed within each calendar year.

Doubtless this request is not necessary as no change is being made in the accounting methods heretofore employed, but on December 31st, 1937, the corporation, Ross B. Hammond, Inc., was dissolved and the business transferred to Ross B. Hammond, the sole stockholder of the corporation. The first return, of course, covering the operation of the business as a sole proprietorship, will be for the year 1938, and, as we understand the regulations, the method used upon the first return is optional with the taxpayer. However, since there been a change in the form of organization, it is desired to take every precaution possible to see that

Defendant's Exhibit No. 28—(Continued)

the method heretofore employed by the corporation is perpetuated and that the new ownership is permitted to file upon the same basis as that used by the corporation.

In view of the fact that the corporation's books had been kept on the accrual basis, the individual books would be kept on a similar basis and the returns made accordingly on the accrual basis.

A letter from you upon these points will be appreciated.

Very truly yours,

ROSS B. HAMMOND CO.

By /s/ ROSS B. HAMMOND.

RBH:EP

Mar. 29, 1938.

IT:HR:FMA

Mr. Ross B. Hammond,
c/o Ross B. Hammond Company,
1214 Spalding Building,
Portland, Oregon.

Sir:

Reference is made to your letter dated March 3, 1938, in which you request permission to report your gross income for the calendar year 1938 from contracts upon the basis of a percentage of completion of such contracts in accordance with the provisions of article 42-4, Regulations 94, which is the same method used by Ross B. Hammond, Inc., the assets and business of which were transferred to you as sole stockholder on December 31,

Defendant's Exhibit No. 28—(Continued)

1937, and now being operated as a sole proprietorship. It is assumed that no income was received by you as an individual from long-term contracts prior to January 1, 1938.

You are advised that to the extent that your income is derived from long-term contracts as defined in article 42-4 of Regulations 94, you may report your gross income from such contracts upon either of the two bases set forth in that article of the regulations. Which ever method is adopted by you in your first return must be followed for subsequent years, unless permission to change such method of accounting is obtained from the Commissioner as provided in article 41-2 of Regulations 94.

Respectfully,

JOHN R. KIRK,
Deputy Commissioner.

By,
Head of Division.

FMA/ERH-1

Defendant's Exhibit No. 28—(Continued)

[Notation]: Change of accounting, 3/29/38.

[Stamped]: Received Apr. 8, 1938, Rules and Regulations Division.

Ross B. Hammond Co.
Building Construction
1214 Spalding Building
Portland, Oregon

April 5, 1938.

IT:RR:FMA

Mr. John R. Kirk,
Deputy Commissioner of Internal Revenue,
Internal Revenue Building,
Washington, D. C.

Dear Sir:

On March 3rd, 1938, the writer addressed a letter to the Commissioner of Internal Revenue stating that Ross B. Hammond, Inc., a corporation, had been dissolved, and the business transferred to me, the sole stockholder. I requested permission to report income from contracts, as an individual, on a percentage of completion basis, as the corporation had previously been doing, and to keep all accounts and make all returns on an accrual basis. Your reply of March 29th, grants permission to me to report income from contracts as the corporation had been doing, but makes no statement regarding keeping all accounts on an accrual basis.

Up to the year 1938, Ross B. Hammond, Inc., a corporation, made all of their returns on an ac-

Defendant's Exhibit No. 28—(Continued)

crual basis, and Ross B. Hammond, as an individual, who kept no books, made all of his returns on a cash basis.

The corporation has been dissolved, and all future returns will be made as an individual, and, since the main income of Ross B. Hammond is from the construction business which has been kept on an accrual basis, we therefore, request definite permission to make all future returns of Ross B. Hammond as an individual on the same basis as the corporation had previously made returns, which is the accrual basis.

Very truly yours,

R. B. HAMMOND CO.,

/s/ R. B. HAMMOND.

RBH:EP

IT:E:6

LBV

Apr. 25, 1938.

Mr. Ross B. Hammond,
1214 Spalding Building,
Portland, Oregon.

Sir:

Reference is made to your letter dated April 5, 1938, in connection with your request dated March 3, 1938, for permission to change your method of reporting income from the cash to the accrual basis, beginning with the taxable year ending December 31, 1938.

Defendant's Exhibit No. 28—(Continued)

In order that proper consideration may be given to your application it is necessary that information be submitted showing as at the end of the taxable year 1937 the amounts of all items of (a) income accrued but not received; (b) income received in advance of when earned; (c) expenses accrued but not paid, and (d) expenses prepaid. The principal items comprising the foregoing classifications should be stated with the respective amounts thereof. It should also be stated how each of the foregoing classifications was treated for Federal income tax purposes for the taxable year 1937.

Upon receipt of the information requested, consideration will be given to the matter.

Respectfully,

JOHN R. KIRK,
Deputy Commissioner.

By P. W. LUCKETT,
Acting Head of Division.

[Pencil Notations on bottom of page illegible.]

Defendant's Exhibit No. 28—(Continued)

[Stamped]: Received May 11, 1938, Audit Division E.

Ross B. Hammond Co.
Building Construction
1214 Spalding Building
Portland, Oregon

IT:E:6
LBV

May 9, 1938.

Mr. John R. Kirk,
Deputy Commissioner of Internal Revenue,
Internal Revenue Building
Washington, D. C.

Dear Sir:

Replying to your letter dated April 25, 1938, regarding permission to change my method of reporting income from cash to the accrual basis, beginning with the taxable year 1938, please be advised that all items on my personal return for 1937 were reported upon the cash basis, hence:

(a) There was no accrual of income not received;

(b) No income received in advance of when earned;

(c) No expenses accrued but not paid; and

(d) No expenses prepaid.

Accordingly none of these items were shown on the tax return for the year 1937.

Defendant's Exhibit No. 28—(Continued)

As previously stated, the reason for seeking permission to file on the accrual basis is occasioned by the fact that I have personally taken over the contracting business previously conducted by Ross B. Hammond, Inc., and, as you have been advised heretofore, the accounts of that company were kept on the accrual basis. Request has therefore been made for permission to report my income from the contracting business upon the accrual basis, and it is desired that the return be uniform with respect to my personal income.

I trust this is the information you desire, but, if not, I shall be glad to hear from you further.

Yours very truly,

/s/ R. B. HAMMOND.

RBH EP

DEFENDANT'S EXHIBIT No. 29

Statement

[Red Pencil]:

IT:R:A:Recomp.

Recd 6/20/47

[Illegible.]

In re: Ross B. Hammond, Portland, Oregon.

[Illegible.]

Years: 1942 and 1943

Income Tax			
Years	Liability	Prior Liability	Deficiency
1942-1943	\$284,559.71	\$264,356.42	\$203.29

This computation is made on the basis that 75%

Defendant's Exhibit No. 29—(Continued)

of the income of the partnership of Ross B. Hammond Company, exclusive of any credits to R. M. Mason and A. V. Peterson, is taxable to the above-named taxpayer.

1942

Net income, agent's report dated August 29, 1944.....	\$316,252.49
Less: Partnership income overstated.....	10,391.62
Net income adjusted	<u>\$305,860.87</u>
Less: Personal exemption	\$1,200.00
Credit for dependent	350.00
	<u>1,550.00</u>
Balance (surtax net income).....	\$304,310.87
Less: Earned income credit (10% of \$14,000.00).....	1,400.00
Normal tax net income.....	<u>\$302,910.87</u>
Normal tax at 6% on \$302,910.87.....	\$ 18,174.65
Surtax on \$304,310.87	242,674.91
Total tax	<u>\$242,849.56</u>

1943

	Income Tax Net Income	Victory Tax Net Income
Net income, agent's report dated		
August 29, 1944	\$ 78,224.01	\$ 80,647.65
Add: Partnership income	42,475.56	42,475.56
Net income adjusted	<u>\$120,699.57</u>	<u>\$123,123.21</u>

Computation of Victory Tax

Victory tax net income	\$123,123.21
Less: Specific credit	624.00
Income subject to victory tax.....	<u>\$122,499.21</u>
Victory tax at 5% on \$122,499.21.....	6,124.96
Less: Victory tax credit	600.00
Net victory tax	<u>\$ 5,524.96</u>

Defendant's Exhibit No. 29—(Continued)

Computation of Income Tax—Alternative Tax
(Applicable)

Net income adjusted	\$120,699.57
Less: Net long-term capital gain.....	50.00
<hr/>	
Ordinary net income	\$120,649.57
Less: Personal exemption	\$1,200.00
Credit for dependent	350.00
	1,550.00
<hr/>	
Balance (surtax net income).....	\$119,099.57
Less: Earned income credit (10% of \$14,000.00).....	1,400.00
<hr/>	
Balance subject to normal tax.....	\$117,699.57
Normal tax at 6% on \$117,699.57.....	\$ 7,061.97
Surtax on \$119,099.57	74,228.66
<hr/>	
Partial tax	\$ 81,290.63
Plus 50% of net long-term gain of \$50.00.....	25.00
<hr/>	
Alternative tax	\$ 81,315.63
Total income tax	\$ 81,315.63
Plus: victory tax	5,524.96
<hr/>	
Total income tax and victory tax.....	\$ 86,840.59
Income tax for 1942.....	\$242,849.56
Amount of 1942 or 1943 tax whichever is larger.....	\$242,849.56
<hr/>	
Forgiveness feature (not to be used if either 1942 or 1943 tax is \$50.00 or less):	
(a) Amount of 1942 or 1943 tax whichever is smaller	
	\$86,840.59
(b) Amount forgiven (\$50.00 or three- fourths of (a), whichever is larger)....	
	65,130.44
<hr/>	
(c) Amount forgiven	\$ 21,710.15
<hr/>	
Total income and victory tax liability.....	\$264,559.71
Income tax previously determined.....	264,356.42
<hr/>	
Increase in income and victory tax.....	\$ 203.29

Defendant's Exhibit No. 29—(Continued)

Explanation of Adjustments—1942-1943

It is held that during the years 1942 and 1943 a partnership existed between Ross B. Hammond and his son, William A. Hammond, and that profits therefrom should be taxed 75 percent to the father and 25 percent to the son; also that the amounts of \$86,635.86 credited to the accounts of H. M. Mason and A. V. Peterson in 1942 and \$77,366.37 in 1943 could not be considered constructively received and therefore the two partners should be taxed upon the entire income exclusive of the credits above indicated, or a redistribution of partnership income as follows:

1942

Net income of partnership Ross B. Hammond and Company before credits of \$86,635.88 to H. M. Mason and A. V. Peterson:	
(Report dated December 21, 1945).....	\$410,610.02
Add: Salary paid to William A. Hammond.....	7,500.00
	<hr/>
Total adjusted partnership income.....	\$418,110.02
Ross B. Hammond share: 75% of \$418,110.02.....	\$313,582.52
Amount previously reported	
(report dated August 29, 1946).....	323,974.14
	<hr/>
Decrease in income	\$ 10,391.62

1943

Net income of partnership Ross B. Hammond and Company before credits of \$77,366.37 to H. M. Mason and A. V. Petersen:	
(Report dated April 12, 1947).....	\$162,063.26
Add: Salary paid to William A. Hammond.....	7,500.00
	<hr/>
Total partnership income	\$169,563.26
Ross B. Hammond share: 75% of \$169,563.26.....	\$127,172.45
Previously reported	
(report dated August 29, 1946).....	84,696.89
	<hr/>
Increase in income	\$ 42,475.56

Defendant's Exhibit No. 29—(Continued)

Statement

IT:R:A—Recomp. [Red Pencil] Recd 6/20/47
[Illegible.]

In re: William A. Hammond, Portland, Oregon

Years 1942 and 1943

Years	Income Tax Liability	Prior Liability	Deficiency
1942-1943	\$61,910.57	\$28,100.23	\$33,810.34

This computation is made on the basis that 25 per cent of the income of the partnership of Ross B. Hammond and Company, exclusive of any credits to H. M. Mason and A. V. Peterson, is taxable to the above-named taxpayer.

1942

Net income shown on amended return.....	\$ 44,933.10
Add: Partnership income understated.....	59,897.85
Net income adjusted	\$104,830.95
Less: Personal exemption	1,200.00
Balance (Surtax net income).....	\$103,630.95
Less: Earned income credit: (10% of \$14,000.00).....	1,400.00
Normal tax net income.....	\$102,230.95
Normal tax at 6 percent on \$102,230.95.....	\$ 6,133.86
Surtax on \$103,630.95	62,008.45
Total tax	\$ 68,142.31

Defendant's Exhibit No. 29—(Continued)

1942 Recomputed

Section 6(d)(1) Current Tax Payment Act of 1943

Net income shown on amended return.....	\$ 44,933.10
Add: Partnership income understated.....	59,897.85
Net income adjusted	\$104,830.95
Amount of earned income excluded under section 6(d)	
(1) Current Tax Payment Act of 1943.....	14,000.00
Balance	\$ 90,830.95
Less: Personal exemption	1,200.00
Balance (surtax net income).....	\$ 89,630.95
Less: Earned income credit.....	None
Normal tax net income.....	\$ 89,630.95
Normal tax at 6% on \$89,630.95.....	\$ 5,377.86
Surtax on \$89,630.95	51,163.21
Total tax	\$ 56,541.07

1943

	Income tax net income	Victory tax net income
Net income reported on return.....	\$44,115.59	\$44,493.60
Less: Partnership income overstated.....	1,654.29	1,654.29
Net income adjusted	\$42,461.30	\$42,839.31

Computation of Victory Tax

Victory tax net income.....	\$ 42,839.31
Less: Specific exemption	624.00
Income subject to victory tax.....	\$ 42,215.31
Victory tax at 5% on \$42,215.31.....	\$ 2,110.77
Less credit: 40% of \$2,110.77.....	844.31
Net victory tax	\$ 1,266.46

Defendant's Exhibit No. 29—(Continued)

Computation of Income Tax

Adjusted net income	\$ 42,461.30
Less: Personal exemption	1,200.00
<hr/>	
Balance (surtax net income).....	\$ 41,261.30
Less: *Earned income credit	892.67
<hr/>	
Balance subject to normal tax.....	\$ 40,368.63
Normal tax at 6% on \$40,368.63.....	2,422.13
Surtax on \$41,261.30	17,789.39
<hr/>	
Total tax	\$ 20,211.52
Add: Net victory tax	1,266.46
<hr/>	
Total income and victory tax.....	\$ 21,477.98
Income tax for 1942 recomputed.....	\$ 56,541.07
Amount of 1942 or 1943 tax whichever is larger.....	\$ 56,541.07
Forgiveness feature (not to be used if either 1942 or	
1943 tax is \$50.00 or less):	
(a) Amount of 1942 or 1943 tax whichever	
is smaller	\$21,477.98
(b) Amount foregiven (\$50.00 or three-	
fourths of (a), whichever is larger)....	16,108.48
<hr/>	
(c) Amount unforgiven	\$ 5,369.50
<hr/>	
Total income and victory tax liability.....	\$ 61,910.57
Income tax previously determined.....	28,100.23
<hr/>	
Deficiency in income and victory tax.....	\$ 33,810.34
Earned Income Credit:	
* (10% of 20% of \$42,390.81.....	\$ 847.82
10% of \$448.50	44.85
<hr/>	
Total	\$ 892.67

Defendant's Exhibit No. 29—(Continued)

Explanation of Adjustments

1942-1943

It is held that during the years 1942 and 1943 a partnership existed between William A. Hammond and his father Ross B. Hammond, and that the profits therefrom should be taxed 25% to the son, and 75% to the father; also that the amounts of \$66,635.88 credited to the accounts of H. M. Mason and A. V. Petersen in 1942 and \$77,366.37 in 1943 could not be considered constructively received and therefore the two partners should be taxed upon the entire income exclusive of the credits above indicated, or a redistribution of partnership income as follows:

1942

Net income of partnership, Ross B. Hammond and Company before credit of \$86,635.88 to H. M. Mason and A. V. Petersen:	
(Report dated December 21, 1946).....	\$410,610.02
Add: Salary paid to William A. Hammond.....	7,500.00
	<hr/>
Total adjusted partnership income.....	\$418,110.02
William A. Hammond share: 25% of \$418,110.02.....	104,527.51
Amount previously reported on amended return.....	44,629.66
	<hr/>
Increase in income	\$ 59,897.85

1943

Net income of partnership, Ross B. Hammond and Company before credits of \$77,366.37 to H. M. Mason and A. V. Petersen:	
(Report dated April 12, 1947).....	\$162,063.26
Add: Salary paid to William A. Hammond.....	7,500.00
	<hr/>
	\$169,563.26
William A. Hammond share: 25% of \$169,563.26.....	42,390.91
Amount reported on original return.....	44,045.10
	<hr/>
Decrease in income	\$ 1,654.29

1942	31	44,629.66 - 7,500 1942				37 129 66
1943	31	40,657.02 - 7,500 1943	213			33 157 92
1944	31	3,711.92 - 7,500 1944				32 11 92
1945						73 49 60
1946	31	10,907.25 - 12,500	246			159 27 5
1947	31	5,938.92 - 17,500				71 00 15
1948	31	126,144.77 54,500				(156) 08
1949	31	ck # 1442	35,344.77	35,000.00		703 4 77
1950	31	50,189.48 - 35,000 -	88,533.25			15 188 48
1951	31					35 000 00
<div style="text-align: center;"> <u>300 31</u> <i>Paid</i> </div>						

Portland Raising & Supply Co.
 Worcester Building

1953
 March 31
 April 9

0-148

Waterproofing walls

9190

918

1939

N. M. Mason

Aug 31		Teleph calls to N. M.	7772	275
Sept 12	ck 0-5204		787	275
Oct 31		Teleph calls to N. M.	779	1575
Apr 12	ck 0-6083		995	1575
Apr 30		3300 telegrams	1000	600
May 10	ck 0-6120		108	600
Dec 31	1948	59,506.22 - 10,000 1442		49,506.22
Dec 31	1948	54,209.35 - 10,000 1443		44,209.35
Dec 31	1949	14,282.56 - 10,000 1444		4,282.56
Dec 31	1950			1,178.13
Dec 31	1951	14,542.44 - 12,500	9467	2042.97
Dec 31	1952			10,140.11
Jan 14	ck #31.5		20000.00	
Jan 16		17,217.16 - 27,500		
Jan 31		17,217.16 - 27,500	67,758.22	20000.00 (60,282.84)
Jan 31			49,758.22	20666.66
Jan 31				7.000.00
Jan 31				49758.28
Jan 31				64738.28

Recd
32
3072

ca 7124, 1938

mail - Well Envelope Co. 2136 S. E. 7th Ave.

May 21		1000 air mail envelopes	9632	
26		1000 air mail letterheads		
June 1	ck 0-4207		635	2380
Sept 25		150 - 9 1/2 x 11 1/2 H. D. 40 Brown	914	
		Knapp 200 - String Line		
		50 - 10 1/2 x 15 - H. D. 40 Brown Knapp 200		
		String Line	920	1843
Oct 10	ck 0-5824			
July 31		110 - 9 1/2 x 11 1/2 H. D. 40 Brown	1043	
Aug 8	ck 0-6244		1046	525
Jan 23		200 heavy Brown eps		
Feb 11	ck 0-6507		912	745
Mar 10		100 - 10 x 15 heavy string envelopes		
		40 Knapp -		
Apr 9	ck 0-6595		920	775
Sept 30		100 - 9 1/2 x 12 - Open Side Dan Valley		
		50 - 9 1/2 x 12 - Clasp 28	4.23	
Oct 10	ck 0-934			423
Dec 31	1948			
Jan 10	ck #1237			3080

W. Hammond - Insurance

1943 Insurance	7500 00
1944 "	31,891 02
1945 ✓	10,703 50
1946 ✓	35,328 09
1947 ✓	12,731 37

W. Hammond - Insurance

	8451.17
12705401	11,610284
18572897	28,78394
20055275	7412028
34170602	3574218
392,2672	37,68434

1942 Insurance	
1943 ✓	
1944 ✓	
1945 ✓	
1946	
1947 ✓	

Handwritten note: 35
3018

W. Hammond - Capital

1942 Insurance	Cap. Ins. Exp.	3712966
1943 ✓	7367476	4454516
1944 ✓	6136548	4758174
1945 ✓	566854	2500654
1946 ✓	6529569	13498524
1947 ✓	10517072	5260640

Total Paid

20059122
37677161
44709851
54722403
64756579
46536465

W. Hammond - Capital

5501039	16346156
17604284	32133229
20000012	34835220
20220354	7501970
24006458	13498524
36019393	15781917

End 1942-
1943 Insurance
1944 ✓
1945 ✓
1946 ✓
1947 ✓

DEFENDANT'S EXHIBIT No. 36

Journal Entry: J. 125

Dec. 31, 1942	Job 208	J 125	47254.58
	Job 210		53307.66
	Job 211		39670.81

Office Salaries	16467.51
W. A. Hammond, A/P overhead	37129.66
A. V. Peterson	37129.66
H. M. Mason	49506.22

[Endorsed]: No. 12073. United States Court of Appeals for the Ninth Circuit. J. W. Maloney, United States Collector of Internal Revenue for the District of Oregon, Appellant, vs. Ross B. Hammond, Appellee. Transcript of Record. Appeal from the District Court of the United States for the District of Oregon.

Filed: October 22, 1948.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 12073

J. W. MALONEY, United States Collector of
Internal Revenue for the District of Oregon,
Appellant,

vs.

ROSS B. HAMMOND,

Appellee.

MOTION

Comes now Henry L. Hess, United States Attorney for the District of Oregon, and Victor E. Harr, Assistant United States Attorney, and based upon affidavit moves the Court for an order extending the time for filing the record on appeal and docketing the action, granting to appellant ninety (90) days from June 18, 1948. This motion is based upon Rule 73, Rules of Civil Procedure.

Dated at Portland, Oregon, this 15th day of July, 1948.

HENRY L. HESS,
United States Attorney for the District of Oregon.

/s/ VICTOR E. HARR,
Assistant United States Attorney.

So Ordered:

/s/ FRANCIS A. GARRECHT,
Senior United States Circuit Judge.
(Affidavit of Service by Mail.)

[Endorsed]: Filed July 16, 1948. Paul P.
O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

MOTION

Comes now Henry L. Hess, United States Attorney for the District of Oregon, and Victor E. Harr, Assistant United States Attorney, and based upon attached affidavit moves the Court for an order extending the time for filing the record on appeal and docketing the action, granting to appellant thirty (30) days from September 16, 1948. This motion is based upon Rule 73, Rules of Civil Procedure.

Dated at Portland, Oregon, this 10th day of September, 1948.

HENRY L. HESS,
United States Attorney for the District of Oregon.

/s/ VICTOR E. HARR,
Assistant United States Attorney.

ORDER

This matter coming on to be heard upon motion of Henry L. Hess, United States Attorney for the District of Oregon, and Victor E. Harr, Assistant United States Attorney, for an order extending the time thirty (30) days from September 16, 1948 for filing the record on appeal and docketing the action, and the Court having considered said motion and the supporting affidavit filed therewith, and being advised, it is

Ordered that the appellant be and he is hereby granted an extension of thirty (30) days from

September 16, 1948 within which to file and docket the record on appeal.

Dated at San Francisco, California, this 13th day of September, 1948.

/s/ WILLIAM DENMAN,
Chief Judge, U. S. Court of Appeals for the Ninth
Circuit.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed September 13, 1948. Paul P.
O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

MOTION

Comes now Henry L. Hess, United States Attorney for the District of Oregon, and Victor E. Harr, Assistant United States Attorney, and based upon the attached affidavit moves the Court for an order extending the time for filing the record on appeal and docketing the action, granting to appellant thirty (30) days from October 16, 1948. This motion is based upon Rule 73, Rules of Civil Procedure.

Dated at Portland, Oregon, this 11th day of October, 1948.

HENRY L. HESS,
United States Attorney for the District of Oregon.

/s/ VICTOR E. HARR,
Assistant U. S. Attorney.
(Affidavit of Service by Mail attached.)

[Endorsed]: Filed October 14, 1948. Paul P.
O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

OBJECTIONS TO MOTION FOR EXTENSION
OF TIME TO DOCKET APPEAL

Comes now the appellee above-named and objects to the granting of the motion of the appellant for an extension of time for filing the record and docketing the appeal for a period of thirty days from October 16, 1948 on the following grounds, to-wit:

1. Neither the motion nor the affidavit attached thereto and upon which the motion is predicated presents any valid reason for such extension of time.

2. That under Rule 73(g) of the Federal Rules of Civil Procedure the District Court alone is authorized to grant an extension of time for the docketing of an appeal.

This objection is based upon the affidavit of Robt. T. Jacob, verified October 14, 1948, and upon the records and files of this cause in this Court and in the United States District Court for the District of Oregon.

Dated October 14, 1948.

/s/ ROBERT T. JACOB,

/s/ S. J. BISCHOFF,

Attorneys for Appellee.

(Acknowledgment of Service.)

[Endorsed]: Filed October 15, 1948. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

ORDER

This matter coming on to be heard upon motion of Henry L. Hess, United States Attorney for the District of Oregon, and Victor E. Harr, Assistant United States Attorney, for an order extending the time thirty (30) days from October 16, 1948, for the filing of the record on appeal and docketing the action, and the Court having considered said motion and the supporting affidavit filed therewith, and being advised, it is

Ordered that the appellant be, and he is hereby granted an extension to October 23, 1948, within which to file and docket the record on appeal.

Dated at San Francisco, California, this 15th day of October, 1948.

/s/ WILLIAM DENMAN,
Chief Judge, U. S. Court of Appeals, Ninth Circuit.

[Endorsed]: Filed October 15, 1948. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

APPELLANT'S STATEMENT OF POINTS ON WHICH HE INTENDS TO RELY ON AP- PEAL AND DESIGNATION OF THE REC- ORD FOR PRINTING

Comes now J. W. Maloney, United States Collector of Internal Revenue for the District of Oregon, appellant above-named, and pursuant to Subdivision 6, Rule 19, of the Rules of the United

States Court of Appeals for the Ninth Circuit, hereby adopts the statement of points filed in the District upon which appellant intends to rely on appeal, and herewith designates the following parts of the transcript of record as prepared and certified by the Clerk of the District Court to be printed for the purposes of this appeal:

1. Complaint, filed March 16, 1946.
2. Answer, filed July 19, 1946.
3. Motion and Notice and Affidavit attached for leave to file an amended answer, filed October 17, 1947.
4. Objections to the Motion of defendant for leave to file an amended answer, and affidavit attached thereto, filed October 27, 1947.
5. Petition of the United States for leave to intervene, filed October 31, 1947.
6. Objections to petition for intervention, filed November 10, 1947.
7. Order sustaining plaintiff's objections to petition for intervention, entered and filed November 14, 1947.
8. Findings of Fact and Conclusions of Law, filed April 21, 1948.
9. Judgment, entered and filed April 21, 1948.
10. Notice of Appeal, filed June 18, 1948.
11. Motion, Affidavit and Order of the Circuit Court of Appeals, granting extension of ninety days from the date of filing Notice of Appeal to file and docket record on appeal, dated July 16, 1948, and filed July 22, 1948.

12. Motion, Affidavit and Order of Circuit Court of Appeals granting extension of thirty days from September 16, 1948 within which to file and docket record on appeal, dated September 13, 1948, filed October 19, 1948.

13. Order of the Circuit Court of Appeals granting extension to October 23, 1948, to file and docket record on appeal, dated October 15, 1948; filed October 19, 1948.

14. Statement of Points on which Defendant Intends to Rely on Appeal. (D.C.)

15. Order to send trial exhibits.

16. Designation of Contents of Record on Appeal. (D.C.)

17. Entire transcript of testimony and proceedings of the trial.

18. The following exhibits:

Plaintiff's Exhibit 1—Letter dated July 7, 1938, Commissioner of Internal Revenue to Ross B. Hammond.

Plaintiff's Exhibit 3—Agreement and Articles of Partnership dated Feb. 3, 1942, between Ross B. Hammond and William A. Hammond.

Plaintiff's Exhibit 4—Agreement dated Feb. 3, 1942, between Ross B. Hammond and Henry M. Mason.

Plaintiff's Exhibit 5—Agreement dated Feb. 3, 1942, between Ross B. Hammond and A. V. Petersen.

Plaintiff's Exhibit 6—Only that part of the exhibit consisting of the income tax returns of Ross B. Hammond for the years 1942 and 1943.

Defendant's Exhibit 26—Original income tax returns of A. V. Petersen for 1942 and 1943.

Defendant's Exhibit 27—Income tax returns of Henry M. and Elizabeth R. Mason for 1942 and 1943.

Defendant's Exhibit 28—Letters dated March 3, 1938, taxpayer to Commissioner; March 29, 1938, Commissioner to taxpayer; April 5, 1938, taxpayer to Commissioner; April 25, 1938; Commissioner to taxpayer; and May 9, 1938, taxpayer to Commissioner.

Defendant's Exhibit 29—Statement in re Ross B. Hammond for the years 1942 and 1943, and statement in re William A. Hammond for the years 1942 and 1943.

Plaintiff's Exhibit 31—Subsidiary Ledger Account A. V. Petersen.

Plaintiff's Exhibit 32—Subsidiary Ledger Account H. M. Mason.

Plaintiff's Exhibit 35—Sheet from Subsidiary Ledger in re Capital Account.

Defendant's Exhibit 36—Transcript of Journal Entry 125.

All of the other exhibits are either unnecessary for consideration of the points upon which appellant intends to rely upon appeal, are voluminous and are otherwise not susceptible for printing but

will be available for inspection by the Court as they have been transmitted to the Circuit Court in their original form.

19. This Statement and Designation.

Dated this 10th day of December, 1948.

/s/ HENRY L. HESS,
United States Attorney.

/s/ VICTOR E. HARR,
Assistant U. S. Attorney.

/s/ THOMAS R. WINTER,
By /s/ VICTOR E. HARR,
Special Assistant to the U. S. Attorney.

(Acknowledgment of Service.)

[Endorsed]: Filed December 13, 1948. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

DESIGNATION OF ADDITIONAL PARTS OF
THE RECORD TO BE PRINTED

Comes now the appellee above-named and designates the following additional parts of the record to be printed:

1. Plaintiff's Exhibit 12.
2. Plaintiff's Exhibit 13.
3. Plaintiff's Exhibit 14.
4. Plaintiff's Exhibit 15.
5. Plaintiff's Exhibit 16.
6. Plaintiff's Exhibit 17.
7. Plaintiff's Exhibit 18.
8. Plaintiff's Exhibit 19.
9. Plaintiff's Exhibit 20.

Appellee objects to the printing of the following portions of the transcript of the testimony on the ground that all of said testimony pertains to the issue of partnership only. In Appellant's statement of points on which he intends to rely on the appeal he does not challenge the Findings of Fact and Conclusions of Law of the Court below in so far as it determines the existence of the partnership between Ross B. Hammond and William A. Hammond. Therefore, all testimony pertaining thereto will be an unnecessary incumbrance of the record.

The parts of the transcript to be omitted are as follows:

1. Omit last two lines of page 27 to and including the first 10 lines on page 33.

2. Omit the last 5 lines on page 80 to and including the first 7 lines on page 102.

3. Omit last line on page 117 to and including the first 14 lines on page 119.

4. Omit the last 11 lines on page 161 to and including the first 17 lines on page 163.

5. Omit the last 19 lines on page 165 to and including page 176.

6. Omit last 23 lines on page 178 to and including the first 4 lines on page 191.

7. Omit page 195 to and including the first 19 lines on page 198.

8. Omit last two lines on page 200 to and including the first 3 lines on page 202.

9. Omit the last 12 lines on page 211 to and including page 226.

10. Omit last 16 lines on page 229 to and including the first 5 lines on page 233.

11. Omit all of page 251 except the first line to and including the first 14 lines on page 266.

12. Omit page 280 to and including first 6 lines on page 282.

13. Omit last 23 lines on page 310 to and including page 313.

14. Omit page 399 to and including page 409.

Dated December 18, 1948.

/s/ R. T. JACOB,

/s/ S. J. BISCHOFF,

Attorneys for Appellee.

/s/ VICTOR E. HARR,

Of Attorneys for Appellant.

[Endorsed]: Filed December 27, 1948. Paul P. O'Brien, Clerk.